

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2006

THURSDAY, MAY 26, 2005

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 2:02 p.m., in room S-146, the Capitol, Hon. Richard C. Shelby (chairman) presiding.

Present: Senators Shelby, Gregg, Stevens, Cochran, and Mikulski.

## DEPARTMENT OF COMMERCE

### OFFICE OF THE SECRETARY

#### STATEMENT OF HON. CARLOS M. GUTIERREZ, SECRETARY OF COMMERCE

Senator SHELBY. The subcommittee will come to order. I want to welcome the Secretary of Commerce, Secretary Gutierrez, who is here today. This is your first appearance before the newly created Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies. Welcome, Mr. Secretary.

Secretary GUTIERREZ. Thank you.

#### BUDGET REQUEST

Senator SHELBY. We thank you for joining us for this budget discussion.

We look forward to hearing from you about your vision for the Commerce Department and the challenges that you see as the Secretary in the coming year. Given the tight budget, we seem to always have tight budget constraints that we are facing, this subcommittee will need your assistance big time in making some very tough choices about the distribution of resources as well as your guidance regarding the essential priorities of the Department of Commerce.

The fiscal year 2006 budget request which is before us for the Department of Commerce is \$9.4 billion. This includes \$3.7 billion for the President's strengthening America's communities initiative, and with the initiative, the Department's total budget increases by \$3 billion over last year's funding level. Without the initiative, however, the Department's total budget decreases by \$656 million.

While this initiative has laudable goals, I believe there may be some obstacles ahead. The program consolidates 18 Federal eco-

conomic and community development programs from a variety of agencies into a single direct grant program to be housed in the Commerce Department. Legislation has not yet been introduced to authorize the program, and the details of the initiative are still unknown. I hope today you will provide us some information regarding the details that have been lacking about the initiative as well as your plan for moving forward. I think it is important for us as appropriators to know where we are going and how we're going to get there.

The Department's budget also, Mr. Secretary, proposes significant increases for the Census Bureau, the Patent and Trademark Office (PTO), and the Bureau of Industry and Security (BIS). I understand that the increase for the Census Bureau primarily supports the decennial census, and the increase for PTO reflects full access to its fees and will support minimizing application processing time and enhancing the quality of products and services for the patent process and the trademark process. I hope we can discuss these increases.

We would also like to discuss whether the increases proposed for the Bureau of Industry and Security are sufficient to support BIS' critical mission regulating the export of sensitive goods and technologies. Your budget does include some programmatic decreases and this concerns me. Mr. Secretary, the administration proposes to cut funding for the National Oceanic and Atmospheric Administration (NOAA) by 8.5 percent. The cut comes at a time when the Presidentially appointed U.S. Ocean Commission recommended doubling our Federal expenditures on ocean and coastal research, and given the recommendation, the subcommittee finds such a decrease a little puzzling.

Mr. Secretary, following your confirmation, I am sure you were surprised to learn that NOAA makes up 65 percent of your budget. While we appreciate that you must balance many important priorities within the Department of Commerce, you will find on this subcommittee, there is significant interest in NOAA. NOAA produces nautical charts and tide predictions critical to trade and commerce. It manages fish and shellfish for world consumption. It provides weather and climate predictions vital to the agriculture and energy sectors and to commerce as a whole. Mr. Secretary, I hope as you begin to write your first budget request for the Commerce Department, you consider carefully the concerns of this subcommittee regarding the funding for NOAA.

I am pleased that the administration continues to show support in its budget request for the labs of the National Institute of Standards and Technology, better known as NIST, by proposing \$426 million, a 12.5 percent increase above last year's appropriation. Your labs play a vital role in the development of measurements, standards and technology to enhance productivity, facilitate trade and improve the quality of life. NIST's standards and measurements contribute to the development of such things as bulletproof vests, mammogram technology, DNA analysis, computer security, nanotechnology, voting machines, and manufacturing.

Unfortunately, the administration proposed to terminate the Advanced Technology Program and reduce the Hollings Manufacturing Extension Program by over 50 percent. I am sure you will

find, Mr. Secretary, that these programs enjoy support on both sides of the aisle here from a number of members. I plan to work with Senator Mikulski to ensure that all of NIST's programs are funded so it can carry out its mission of standards and technology.

In addition, the budget proposes to terminate the public telecommunications facilities, planning, and construction program, grants which provide support for public broadcasting's digital conversion. The proposal assumes these grants can be provided through the Corporation for Public Broadcasting (CPB), even though CPB's assistance has traditionally been a lot more limited. I would like to discuss the impact of the shift of responsibilities that it would have, especially on rural stations in the United States.

Mr. Secretary, I look forward to hearing your thoughts on the Commerce budget request and look forward to working with you in the years ahead.

Senator Mikulski.

Senator MIKULSKI. Thank you very much, Mr. Chairman, and I want to associate myself with the priorities you have outlined here.

I do want to welcome Secretary Gutierrez to the hearing today, his first appearance, and we look forward to ongoing conversation not only in these formal public hearings. Knowing of his distinguished career in business, we know that we can count on him to promote American business both here at home and abroad.

Mr. Secretary, you know you have a tough job. Our trade deficit is at a record high, over \$600 billion. Our manufacturing is fading. Where will the new ideas and the new jobs come from? And also, the challenges of protecting our intellectual property as well as moving many ideas into a patent framework so that they can be protected. I am concerned that we could be losing our competitive edge in the global economy.

But here, as we look at your budget, we feel that we could be working for a stronger economy, and we look forward to working with you. As I go through my questions, one of the areas we will be looking at is how will this budget help develop innovation? Because that will be the key to our future, to develop new technologies and new innovations, new ideas that create the new jobs in the future.

Also, I want to know how this year's budget actually focuses on saving lives and saving property. And this takes us to NOAA as well as to NIST. NOAA safeguards and protects property by forecasting the weather, protecting natural disasters, and helping citizens and communities prepare as well as the mapping that it does. NIST, our own National Institute of Standards, as Senator Shelby says, is developing breakthrough ideas on technology.

We do not always think of them as life savers; yet, when I visited NIST, I saw they had a replica and computer models and actual physical renditions of the World Trade Center. And there, just in very modest laboratory circumstances, they were identifying why did that building collapse? Why was there so much smoke? All of the questions that led to such death and destruction. And they wanted to know not only so we could honor what happened but will lead to new ideas and building codes and architectural reform and

better standards and toxic materials in buildings. They are saving lives. They had digital cameras they were testing.

Mr. Chairman, as we spend millions on homeland security and the fire grant program, what are the digital cameras that can really help a first responder go into a room and spot whether it is a mattress on the floor or whether it is a child wrapped in a blanket, and they are doing that, setting those standards. So we are proud of them, and we look forward to what we can do to work with them. We love the Commerce Department in Maryland. It is the headquarters of NOAA. NIST is located there as well as the Census Bureau, and I know as you visited them, you see how dedicated those civil servants are.

So as we look at NOAA, I want to reiterate what our chairman said: make sure that it is adequately funded so that it can save lives and save livelihoods. And also, many of the ideas that they develop, we are seeing that they move into the commercial marketplace. They seem to be developing public-private partnerships, especially in the weather field. So we look forward to hearing your ideas and how you see that while they do the research and do the studies how this goes into the future.

In terms of the innovation economy, I am concerned that the Task Force on the Future of American Innovation is concerned that we are falling behind in innovation. And that is where we look to NIST to research these technologies and in these new fields such as nanotech, through programs like the Advanced Technology Program and the Manufacturing Extension Partnership. I will tell you, they have been a tremendous help in the biotech field right here in the Capital region and have spawned some of these ideas.

But really, what has me on edge is the backlog of patent applications. We have a backlog of almost 500,000 patent applications, and if we invent it, we want to protect it so we can sell it. And we look forward to your ideas on how to deal with the backlog. We know the budget is tight. We have tough choices. But I want to be sure that we work in a partnership with you. I want to keep their ideas here and protect their ideas so that we continue building our market share, so the workers are working in a team and having a budget framework that works as well.

Thank you, Mr. Chairman.

Senator SHELBY. Senator Stevens.

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ACTIVITIES AND FUNDING

Senator STEVENS. Mr. Secretary, I welcome you to this hearing today. When we had a shift of control in the Senate, this was my office for awhile. It sort of reminds me of a lot of things, but one of the things it reminds me of is the meetings we had here about NOAA. And we just, your Department recently discovered that the way that the coastline of the United States has been computed is erroneous, and if you include offshore islands and archipelagos and those areas of tidal water up to a point where it is less than—more than 100 foot closure of tidal water, that Alaska's coastline is more—we used to say it was half the coastline of the United States. Now, it is greater than all of the coastline of the United States.

NOAA is to us an enormous entity that covers North Pacific surveys, Gulf Alaska surveys, North Pacific maritime boundary line surveys, the Gulf of Alaska Ecosystem Monitoring, the Southeastern Coastal Observing System, the National Invasive Species Act, and the Marine Debris Removal Program. It is not only important to Alaska's fishing industry, but it is important to the whole country, because we are the home of most of the marine mammals that live off our coasts.

The one thing that bothers me the greatest, though, is the tsunami warning system. After the great tsunami that we witnessed here just in our own lifetime, I went to look at the tsunami warning system in Hawaii. Three of the five warning devices are off of my State. Senator Inouye and I helped them to get there. They have been inoperable for 2 years because of lack of funds. Out of the five, only one was working. Had the tsunami come the other way, the damage to our United States would have been untold, because we would have had no warning, although we thought we were the only Nation in the world that had a warning system.

And now, here comes a level of funding that I just cannot understand. I know you did not do it. You were not there. But someone needs to have their head examined. We exist primarily because of the fish that we consume. Our Nation is turning into a Nation of fish eaters. Sixty percent of all the fish that Americans consume come from off the State of Alaska. All of these NOAA programs are designed to protect those species of the ocean, to assist on debris removal, to insist on no drift nets, to insist on maintaining the concept of limiting fisheries so that they never go beyond the sustainable limit. And NOAA does that all. I really do not understand the NOAA level. It is just impossible for us to understand it.

So I look forward to working with you somehow or other. I think that you will be known as a magician if you can help us solve this problem this year, although I have just come from a meeting where there is good news: they tell us that the deficit this year will be at least \$60 billion to \$70 billion lower than anticipated. I am sure you have seen the good news. The income of the Treasury is up by 20 percent more than it was predicted. The rate of growth of the country is up. If we can get some of that sunshine shining in this room, maybe we can solve this problem.

Welcome.

Senator SHELBY. Senator Gregg.

Senator GREGG. Thank you, Mr. Chairman.

Mr. Secretary, I want to follow on to what the President pro tempore said regarding NOAA, and I guess I have some specific questions in this area. Last year, the subcommittee funded DOC's policy proposal nowhere near what it needed but at a fairly significant and robust level, Admiral Watkins' proposal of \$350 million. And your budget submission basically eliminates that funding.

In addition, we made a strong commitment to NOAA as we always do, and unfortunately, your budget submission does not have the same robust commitment. So I guess my first question to you is what is the administration position on the Ocean Policy Commission's report? It appears to be one of active neglect. I thought maybe you could tell us something else.

Senator SHELBY. We are not in questions yet.

Senator GREGG. We are just doing opening statements. Oh, I apologize. I thought we were in questions.

Senator SHELBY. Just defer.

Senator GREGG. Well, just reserve that question in the back of your mind. I have given you warning.

Senator SHELBY. Maybe you can answer that, Mr. Secretary, when you give your statement.

Senator GREGG. That is my statement.

Senator SHELBY. Thank you.

Senator Cochran.

Senator COCHRAN. As chairman, I could just suggest to the Secretary that you have become Secretary of Commerce at a good time. I noticed the recent economic forecast and reports of the growth in the economy are suggesting that it is way above what expectations were. And we did not expect you would be Secretary of Commerce. So maybe this is the reason why the economy is growing as robustly as it is, and you can discuss that with us, and I would appreciate your observations about what we can foresee maybe more realistically for growth in the future, if it will continue to grow at this rate.

Thank you, Mr. Chairman.

Senator SHELBY. Mr. Secretary, your written statement will be made part of the record. You may proceed as you will.

Secretary GUTIERREZ. Thank you, Mr. Chairman. I have a summary of the statement in front of me.

Senator SHELBY. Okay.

Secretary GUTIERREZ. Mr. Chairman and Senator Mikulski and members of the subcommittee, I am pleased to present the President's fiscal 2006 budget request for the Department of Commerce, and with your permission, I would like to just highlight some of the key components of the budget and submit my written testimony for the record.

Senator SHELBY. Sure.

Secretary GUTIERREZ. As you well know, Congress created the Department of Commerce 100 years ago to promote economic growth and opportunity for business and workers. Our approach to this vital mission is threefold: first, we provide the tools to maximize U.S. business development and competitiveness; second, we foster technology and innovation; and third, enhance environmental understanding and stewardship.

The President's total budget request for the Department of Commerce is \$9.4 billion, and it is focused on core programs that promote a prosperous, productive, and secure America. Included in this budget is \$3.71 billion for the President's new Strengthening America's Communities Initiative.

Our economy, as you know, is solid, it is strong, and it certainly is stronger than our major trading partners around the world. And as you also know, private forecasters predict that strong economic growth will continue. We know that there are still transitioning communities and workers who need our help. We believe that by consolidating 18 Federal programs within the Department of Commerce, we can simplify the application process, eliminate duplicative programs, and establish greater accountability. Most importantly, we can make better use of taxpayers' dollars and achieve

greater results for low-income people in economically distressed areas.

For the International Trade Administration, we are requesting \$396 million to continue aggressively promoting U.S. exports, opening markets, ensuring a level playing field for American companies and workers. Over the last 50 years, the contribution of exports to our economy has more than doubled. It is more than likely that exports will continue to be an increasing share of our growth as we open markets and the economies of our trading partners expand.

Timely and accurate economic information is needed to generate growth and jobs. Therefore, an additional \$9 million is requested for the Bureau of Economic Analysis. These funds will support completing a multiyear effort to improve economic measures and expand business investment data.

An increase of \$133 million is requested to support initiatives in the Census Bureau, including reengineering the decennial census. Ongoing efforts include administering the American community survey and developing plans for the 2010 census based on only a short form.

For our Bureau of Industry and Security, we are requesting a \$9.5 million increase to target export enforcement of advanced technologies. To maximize technology's contribution to economic growth, high-wage job creation and the health and safety of our citizens, we are requesting \$532 million for NIST. This includes a 13 percent increase for high priority research in areas such as manufacturing, nanotechnology and public safety programs.

For NOAA, we are requesting \$3.6 billion to fund research, prediction, and stewardship programs critical to the Nation's economy and public well-being. This includes funding to begin construction of a fourth fishery survey vessel, to address ecosystem research priorities, and to complete a 2-year plan for providing 100 percent detection capability for a U.S. coastal tsunami. The new system will expand monitoring throughout the Pacific and Caribbean basin and provide warning coverage for regions bordering half of the world's oceans. I would like to thank the members for the funds in the fiscal year 2005 supplemental for our tsunami efforts.

Mr. Chairman, this budget concentrates on our Nation's 21st century economic and security needs. The President has shown strong leadership in laying out a course for cutting the budget deficit in half over the next 5 years, and that requires making hard choices across the entire Federal Government.

We have not requested new funding for the Advanced Technology Program. We believe other R&D programs address higher priority needs of the U.S. science and technology community. We have asked Congress to provide phaseout funding for public telecommunications facilities planning and construction, and we have requested funds for the Manufacturing Extension Partnership (MEP) staff which, when combined with outside resources, will allow Hollings MEPs to maintain a national network. Funding will be targeted to the centers' performance and needs.

I understand that there are those who have differing views about these choices. Please know, needless to say, I respect your views, and I look forward to working with you and other Members of Congress throughout the budget process.

## PREPARED STATEMENT

Mr. Chairman, I want to thank you and the subcommittee for the generous support you have provided Commerce programs and missions in the past. I welcome your comments, and I would be pleased to answer any questions that you may have.

[The statement follows:]

## PREPARED STATEMENT OF CARLOS GUTIERREZ

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to present the President's budget request for economic, scientific, technological, and environmental programs of the Department of Commerce. Our request of \$9.4 billion is an increase of \$3.1 billion above the fiscal year 2005 enacted level. This performance-integrated budget, based upon the Department's Strategic Plan, includes a proposal to create a new opportunity to foster domestic economic and community development through the Strengthening America's Communities Grant Program. And, in keeping with Commerce's mission to provide the tools to maximize U.S. competitiveness and enable economic growth for American industries, workers, and consumers, the request continues programs that create conditions for economic growth and opportunity for all Americans by promoting innovation, entrepreneurship, competitiveness, and stewardship.

*Provide the information and tools to maximize U.S. competitiveness and enable economic growth for American industries, workers, and consumers*

The President's new initiative, Strengthening America's Communities (SAC), will consolidate and transform 18 Federal economic and community development programs from the Departments of Agriculture, Health and Human Services, Housing and Urban Development, Treasury, and Commerce into a single direct-grant program to be housed within the Department of Commerce. The purpose of this initiative is to create an Administration-wide unified approach to the Federal government's domestic development efforts, rather than one distributing efforts across agencies. The results will better focus resources and eliminate overlapping and conflicting programs.

This consolidated economic and community development grant program will streamline Federal assistance. It will provide States and communities with simplified access to the Federal grant system, focus on communities most in need of assistance, and require communities to meet substantive accountability standards that will track progress toward achieving the community's goals of long-term economic stability and growth. By consolidating those programs that share a similar mission, the Strengthening America's Communities initiative will help provide a more coherent, strategic and results-oriented focus to federal economic development efforts. In addition, by providing incentives and increased accountability, we can reward communities that make concrete economic improvements in distressed areas. The fiscal year 2006 budget requests a total of \$3.71 billion for the new Strengthening America's Communities Grant Program. The Administration intends to prepare and present to Congress legislation to implement the initiative as soon as possible.

This past February, I met with European Union officials in Brussels, Belgium, to discuss the Administration's continued commitment to working with other nations to achieve common goals. The strength of the U.S. economy is closely tied to our success in fostering international partnerships and encouraging broad support for the sound fiscal and monetary policies that create jobs at home and produce prosperity around the world.

The Bureau of Economic Analysis (BEA) seeks to strengthen the understanding of the United States economy and its competitive position. BEA accomplishes this task by providing accurate economic accounts data in a timely and cost-effective manner, and by supplying many of the Nation's key economic statistics, including the Gross Domestic Product. To ensure we have sufficient tools to provide our decision-makers with the necessary information, we have included in this request a 12 percent increase for BEA to support key initiatives: to improve international statistics to better describe offshore outsourcing, expand business investment data, and finish a multi-year effort to improve the timeliness, relevance, and accuracy of economic measures.

The Bureau of the Census requests an increase of \$133 million to support initiatives that will significantly improve the quality of the information it collects and provides to the country. The most significant increase supports the three key compo-



nents of re-engineering the Decennial Census. First, the American Community Survey, the annual replacement to the once-in a-decade long form, will be fully implemented with funding for group quarters enumeration and a methods panel to update the questionnaire. Second, modernization of the geographic database information remains on schedule. Third, preparation for a short-form only 2010 Decennial Census continues with the 2006 Census Test and development of support systems. Several other notable program changes are supported by this request: improvements to the Automated Export System will produce more accurate trade statistics; expansion of the measurements of services will add detail to this important sector; creation of a Longitudinal Employer/Household Dynamics data base infrastructure will fill critical gaps in local employment data; and strengthening the measurements of migration will improve state-level estimates. In addition, the Bureau of the Census also plans to furnish and move into its new office building at the Suitland Federal Center.

The globalization of trade and the rapid development of technology presents great opportunity and risk to the United States' economic and national security. The Bureau of Industry and Security (BIS) regulates the export of sensitive goods and technologies. The 14 percent budget increase requested will give BIS the necessary tools and personnel to effectively deal with these challenges. The request includes funding for additional licensing personnel to address the rising numbers of licenses, and an Office of Technology Evaluation to ensure that the Department is controlling the appropriate new technologies while not restricting exports of products that are widely available. As license requests have increased so has the need for additional enforcement resources. We are asking for additional enforcement agents, and resources for a seized computer evidence recovery program and additional overseas end-use verification. We are also asking for funding for a program to recruit and retain the high-quality personnel needed for BIS's critical mission.

The International Trade Administration (ITA) is charged with promoting international trade, opening foreign markets to U.S. businesses, and ensuring compliance with trade laws and agreements while supporting U.S. commercial interests at home and abroad. In carrying out its mission, ITA conducts detailed domestic and international competitive analyses to ensure that the U.S. manufacturing and service sectors compete effectively and meet the demands of global supply chains, as well as understand the competitive impact of regulatory and economic changes. ITA supports the U.S. exporting community directly by providing a variety of products and services, and by operating a Trade Information Center to provide a single point of customer contact to government export assistance programs.

The Minority Business Development Agency (MBDA) is focused on accelerating the growth and competitiveness of minority-owned businesses by closing the gap in economic opportunities and capital access. We are requesting an increase of \$0.2 million for MBDA to expand the Agency's capabilities to disseminate, analyze and deliver vital statistical data for the minority business community. We are also requesting an increase of \$0.5 million for MBDA to provide equal economic opportunities for full participation of Asian American and Pacific Islander businesses in our free market economy, and to increase the access of minority business enterprises to global markets.

*Foster science and technological leadership by protecting intellectual property, enhancing technical standards, and advancing measurement science*

The President understands the opportunities science and technology provide to enhance the lives of all Americans. The President's focus in the area of science and technology is reflected in the Department of Commerce R&D portfolio. The Commerce budget maintains substantial R&D investments in the Technology Administration (TA), which includes the National Institute of Standards and Technology (NIST) and the National Technical Information Service (NTIS).

The Technology Administration and its various components seek to maximize technology's contribution to economic growth, high-wage job creation, and the social well-being of the United States. TA and NIST not only serve as advocates for technological innovation but also analyze the factors that affect our competitiveness and develop the tools needed to enhance productivity, trade, and, in the end, the quality of life for all Americans. In addition, NIST is engaged in critical research in high-priority areas of technological innovation such as nanotechnology, information technology, biotechnology, and manufacturing technology. NIST is also conducting research in response to the World Trade Center tragedy and the February 2003 nightclub fire in Rhode Island to better prepare facility owners, contractors, architects, engineers, emergency responders, and regulatory authorities to prevent future disasters.

To meet the Nation's needs in setting technological standards, we propose increased funding to NIST laboratories for high priority research areas and necessary facilities upgrades and maintenance. The increases include \$39.8 million to enhance research capabilities in manufacturing (particularly in the area of nanotechnology), expand public safety and security programs, and provide the measurement infrastructure for emerging needs of the Nation's research community, and \$32 million to support the Facilities Improvement Plan for critical construction, major repair, and renovation projects at the NIST sites in Boulder, Colorado, and Gaithersburg, Maryland. Consistent with the Administration's continuing emphasis on shifting resources to reflect changing needs, the fiscal year 2006 budget proposes to terminate the Advanced Technology Program. We propose to fund the Hollings Manufacturing Extension Partnership Program (HMEP) at \$46.8 million. This level of funding, combined with expanding partnerships with other agencies and institutions, will allow the HMEP to maintain a national network.

The U.S. Patent and Trademark Office (USPTO) request will support the USPTO strategic plan for the 21st Century to keep pace with workload growth and to enhance the quality of products and services. The Administration continues to support giving USPTO full access to its fees in the year of collection. This \$148.5 million increase will allow the USPTO to improve processing capacity by hiring additional patent and trademark examiners, continue development of an operational system to process patent applications electronically, continue the transition of the trademark operation to a fully electronic environment, enhance the current quality assurance programs by integrating reviews to cover all stages of examination, and work to achieve greater patent examiner productivity by reducing the prior art search burden. I have visited USPTO's new headquarters in Alexandria, Virginia, and appreciate your support for that facility.

The fiscal year 2006 National Telecommunications and Information Administration (NTIA) request will continue to provide the resources necessary to improve NTIA's research and Federal spectrum management capabilities and provide support for NTIA to implement the President's Spectrum Policy Initiative for the 21st Century.

*Observe, protect and manage the earth's resources to promote environmental stewardship*

The National Oceanic and Atmospheric Administration's (NOAA) mission is to understand and predict changes in the Earth's environment, as well as to conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. The work performed at NOAA touches the daily lives of every person in the United States and in much of the world, since NOAA provides weather, water, and climate services; manages and protects marine resources ecosystems; conducts atmospheric, climate, and ecosystems research; promotes efficient and environmentally safe commerce and transportation; and provides emergency response and vital information in support of homeland security.

In addition to using science and technology to create jobs and improve economic prosperity, the Department is also directing resources toward disaster prevention, to better understand and minimize the loss of life and property from disasters.

While in Brussels, I led the U.S. delegation to the Global Earth Observation Summit and presented the Administration's plan for the U.S. component of a Global Earth Observation System of Systems (GEOSS). A large portion of the increase requested for NOAA in fiscal year 2006 will support the effort to better understand the complex interactions on our planet. With this improved knowledge, decision-makers around the world will be able to make more informed decisions regarding climate, the environment, and other issues.

I applaud the Congress for passing the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, which embraced the President's desire to protect the American people by providing the initial resources necessary to meet the need for 100 percent detection capability for a U.S. coastal tsunami. To continue this effort in fiscal year 2006, we propose to invest \$9.5 million to expand the U.S. tsunami warning system. Once fully implemented by mid-2007, the new system will extend monitoring capabilities throughout the Pacific and Caribbean basins and provide tsunami warning coverage for regions bordering half of the world's oceans.

Currently, NOAA leads the Nation and world in ocean and ecosystem science, policy and management. In December 2004, the Administration released the "U.S. Ocean Action Plan," a response to the U.S. Commission on Ocean Policy's report entitled, "An Ocean Blueprint for the 21st Century." Working under the leadership of the Council on Environmental Quality, and with several other agencies, NOAA substantially assisted in the development of this action plan. NOAA will play a key role

in implementing many of the ocean policy measures that the plan contains, including supporting the establishment of a coordinated ocean governance structure. Consistent with this approach, the Administration continues to support Commerce's leadership role in oceans policy and activities by promoting passage of a NOAA Organic Act. An Administration drafted Organic Act was sent to Congress on April 5th and is awaiting introduction.

In accordance with the President's U.S. Ocean Action Plan, the Department continues to request significant resources for ocean and coastal programs and improved fisheries management, as well as protected species activities. The President's Budget includes more than \$1 billion for these ongoing programs, including \$61.2 million to address state and regional ecosystem research priorities at the National Sea Grant College Program, \$22.7 million in support of NOAA's Ocean Exploration Program, \$32.5 million to begin construction of a fourth fisheries survey vessel that will substantially improve the quality of NOAA fisheries research, and \$25.4 million for fisheries stock assessment. The Budget proposes reforms to the Pacific Coastal Salmon Recovery Fund to help ensure that funds are allocated to high priority activities, and to require matching contributions from State and local recipients of grants.

NOAA's global leadership also extends to monitoring the planet through the development of the GEOSS. The GEOSS will provide NOAA and others with the tools to better understand our planet through an integrated, comprehensive, and sustained Earth observation program. We are requesting a significant increase for GEOSS of \$94.7 million, which includes the development of the next generation of weather satellites.

In addition, the Administration is committed to continuing the LANDSAT mission. Our budget requests \$11 million to begin the process of integrating LANDSAT sensors on future weather satellites. NOAA's satellite programs secure the observational data necessary for more timely and accurate weather forecasts, hurricane predictions, and the development of climate predictive models.

NOAA leads the Administration's interagency Climate Change Science Program. As needs for water, climate, and air quality information increase worldwide, NOAA has been working to improve our understanding of climate and helping develop products and services that provide useful information for national and regional management decisions. One example of this is the National Integrated Drought Information System (NIDIS), which provides early drought warning on a regional level.

Finally, the budget includes investments for improvements in transportation. Additional funding for electronic navigational charts and for accurate current and water level data is essential to safe and environmentally sound shipping. Improving aviation ceiling/visibility forecasting will result in an estimated \$250 million annual fuel cost savings for U.S. airlines.

#### *Achieve organizational and management excellence*

The Department's headquarters building, the Herbert C. Hoover Building (HCHB), is in critical need of major renovation and modernization. The 70 year-old HCHB is one of the last historic buildings in the Federal Triangle to be scheduled for renovation and modernization. To meet basic health and safety codes, meet industry standards, and replace failing mechanical, electrical, and plumbing systems, the Department is requesting \$30 million for its fiscal year 2006 portion of the joint General Services Administration/Department of Commerce project. The request also includes funding of the Department's renovation office that will coordinate the movement of tenants and GSA's work to minimize the disruption of the Department's missions and provide necessary oversight of the project.

Both the Office of the Inspector General and Departmental Management are requesting funding increases to improve acquisition oversight, provide additional training to contract officers and make targeted reviews of both specific contracts and the procurement process. A quarter of Commerce's appropriation is spent on major procurement activities, such as satellites, the Decennial Census and the renovation of HCHB. Improving the acquisition process is one of the Department's top management challenges because, with proper oversight and improvements, taxpayer money can be better utilized.

#### *Conclusion*

In his February 2nd State of the Union Address, the President underscored the need to restrain spending in order to sustain our economic prosperity. As part of this restraint, it is important that total discretionary and non-security spending be held to levels proposed in the fiscal year 2006 President's budget. The fiscal year 2006 President's budget includes more than 150 reductions, reforms, and terminations in non-defense discretionary programs, of which six affect Department of

Commerce programs. To meet this fiscal requirement we are proposing terminating the Advanced Technology Program, the Emergency Steel Guarantee Loan Program, and the Public Telecommunications, Facilities, Planning, and Construction Program. In addition, we are proposing a major reduction from fiscal year 2005 enacted levels in the Hollings Manufacturing Extension Partnership Program. The budget also contains the reform proposals for the Strengthening America's Communities Grant Program and the Pacific Coastal Salmon Recovery Fund discussed above. The Department wants to work with the Congress to achieve these savings and reforms.

The Department of Commerce's fiscal year 2006 budget has been crafted to focus on funding the core functions that the American people rely on from this Department, in the most efficient manner. I look forward to working with the Committee to ensure that together we are providing the best services to the American people—promoting “American Jobs and American Values.”

#### STRENGTHENING AMERICA'S COMMUNITIES INITIATIVE

Senator SHELBY. Thank you.

Mr. Secretary, when do you plan to present legislation authorizing strengthening America's communities?

Secretary GUTIERREZ. Mr. Chairman, we have an advisory committee and we expect to have legislation to you later in the year. That legislation will have a recommendation on how we allocate funds in the future. We have a funding system that has two formulas, and depending which formula you use, you can find money for just about any community. We have communities today at a 2 or 3 percent poverty level who are receiving funds and some communities that have a 20 percent poverty level that are not receiving enough funds. So the challenge for the advisory committee will be how to develop funding criteria that will ensure that the money goes to those communities that really need the money. So we look forward to working with you, and we will have that recommendation to you in late June.

Senator SHELBY. What impact, if any, would this have, if this came about, on the Economic Development Administration (EDA)?

Secretary GUTIERREZ. This would expand what we currently do. Essentially, we have EDA today, and we have moved to strengthening America's communities. We would collapse the six different agencies throughout the Government into one program, because you have 18 different programs today. And we think that by having one program with one criteria and one process, we would make it easier for those who request funds.

We make the criteria transparent for everyone. We ensure that there are accountability measures in the communities; that the money we give out either improves employment or improves private sector investment or improves poverty rates; we would like to tie it to measures and results, and that is what we look forward to doing.

Senator SHELBY. Some of us would like that to come under Commerce, under this subcommittee, but what are your realistic prospects on authorizing and passing that legislation?

Secretary GUTIERREZ. Well, Senator, we do believe that if we get the information out we can ensure that there is understanding about the logic for this and why we are doing this. The fact that in the Commerce Department, we have contacts with the private sector; we believe that community development is very much about attracting private sector investment. We already do that. A lot of what we do is in the private sector, so we have that skill set within

Commerce, and we hope that the logic of this will be seen broadly, because we do believe that it will be better use of taxpayers dollars.

#### EXPORT ADMINISTRATION ACT

Senator SHELBY. Mr. Secretary, the Congress has not reauthorized the Export Administration Act. We continue to confront cases of individuals and companies either deliberately or inadvertently seeking to military sensitive dual use technologies without regard for the licensing process. Do you believe that a \$9.5 million increase over last year's funding level is sufficient to address this?

Secretary GUTIERREZ. I know we are working very hard on this. We have actually added some resources outside of the country to be able to make some checks on dual use items and actually go to the buyers and make sure that they are using items for what they said they would use them. We have got very good contacts with the intelligence community, and we believe that we maximize the use of that. We are always trying to make the greatest use of a limited budget.

#### REORGANIZATION OF INTERNATIONAL TRADE ADMINISTRATION

Senator SHELBY. Last year, you know, there was a large scale reorganization of the International Trade Administration. What results are you seeing? Have you been able to measure that from that reorganization?

Secretary GUTIERREZ. We have been able to concentrate and focus on specific regions of the world. So for me, it is very helpful to be able to have a European expert who is involved primarily in Europe and who understands the issues in Europe and who understands regulations in Europe. We have some very competent Asian experts. We have North American experts. So that level of expertise has been very, very helpful.

We also have individuals who have been involved in industry who have expertise in the steel industry or the textile industry. Having that focus and expertise has helped me, and I know it helps the Department have a sense of focus and results.

Senator SHELBY. Will this include the trade promotion mission?

Secretary GUTIERREZ. Yes, sir, yes. We have done missions and we are planning missions now. We think that an important part of our role is ensuring that our exporters have access to markets where we have free trade agreements. We have had export missions in the past. We are planning one now to eastern Europe. We would like to get more missions going, and I would love to hear from you, sir, for any areas of the world that you think merit missions. An important part of our role is making sure that our businesses know how to access foreign markets.

#### CHINA AS A MARKET ECONOMY

Senator SHELBY. Many people believe that once, or I should say if or when, if ever, China floats its currency and engages in other economic reforms, there is a probability that your Department will declare China to be a market economy looking down the road. If that were to happen, the subsidies that are being given today while China is a nonmarket economy, will that be actionable?

Secretary GUTIERREZ. For China, one of their big priorities is to become a market economy.

Senator SHELBY. Sure.

Secretary GUTIERREZ. That is one of their agenda items that I know they will be taking to our Joint Commission on Commerce and Trade (JCCT). We have a series of other agenda items that we would like to see them address first. Intellectual Property Rights (IPR) is one that is right on top of the list; Government procurement is also on the list. We know that a lot of the software we sell, we cannot sell to the Government. A lot of the software they have is counterfeit. So it is very important for them, and it is a big symbol to them to be named a market economy. We would like to see some things happen before that takes place.

Senator SHELBY. Senator Mikulski.

#### NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY FUNDING

Senator MIKULSKI. Thank you very much, Mr. Chairman.

Mr. Secretary, I would like to discuss the National Institute of Standards. I was very troubled by the fact that it was decreased by 24 percent and is over close to \$500 million. For NIST, which is not a big chunk but a big bang agency, that is a pretty big hit. Would you tell us how you think they can provide the same level of service with the reduction, and why did we eliminate the Advanced Technology Program just when we need to be moving toward cutting edge technology for high value jobs?

Secretary GUTIERREZ. I was over at NIST not long ago, and their challenge, of course, is to focus on their pipeline of ideas and to get them done. As you know, some of those ideas are several years down the road. Quite often, by having too many projects, they can lose effectiveness. We believe that we have that balance of the number of projects and make sure that people are focused on those areas that only we can do. We do not believe that the private sector is involved in nanotechnology to the degree necessary, because they do not have a return in nanotechnology yet. But we have nanotechnology and we have biotechnology. Some of the other areas that require R&D spending are being focused on by the private sector. It's a matter of finding a balance between what we should do, what we can do, and what we can fund.

Senator MIKULSKI. Well, Mr. Secretary, I respectfully disagree with you. The Task Force on American Innovation says that inventors in Asia are applying for patents at a faster rates than inventors in America. Asian nations are increasing their share of high tech exports while the United States is falling. So we have got to be competitive.

And then, I agree with your focus. So I respect your managerial ability and the management effort and focus. But you cannot, even with focus, you still need money. Focus without funds is unfocused. And to cut the Advanced Technology Program, which is a \$140 million decrease, I think is really stunning. And I would like, as we go through our appropriations, for you to read this, and, you know, sure, we could meet with the lab, but you are the Secretary of Commerce.

We want to work with you because we believe that this is a very, very, very important program in terms of them being the link

there. And as you said, our private sector knows about nano, and they are already working in nano. But then, they are going to need standards: what is the smart dust? Are there unintended occupational hazards, because of the small particles? So we want to keep on doing it.

And then, my colleagues are going to ask questions about the ocean policy. They are going to ask about the tsunami. Senator Stevens is here. I want to ask about NOAA about the reduced funding of research there. NOAA research is reduced by \$40 million. And I know we, we are coastal Senators here, and seafood is our life's blood, whether it is our oysters and crabs where we have been doing research. We understand New England has a lobster disease. We are working on those issues.

Senator GREGG. New Hampshire is a coastal State.

Senator SHELBY. An important part.

#### OCEANS POLICY REPORT RECOMMENDATIONS

Senator MIKULSKI. As you can see, we enjoy each other.

But what do you think are the consequences of reducing NOAA funding for research by \$40 million? What are we not going to do?

Secretary GUTIERREZ. As you know, Senator, we received 200 recommendations on the Oceans Policy Report. It is hard to tackle 200 recommendations at once. The President does not really disagree with them, but we picked 50. We have \$23 million in the request to make sure that we have 100 percent tsunami protection and coverage. We have \$32 million for a new fisheries vessel. The big projects, the projects that we believe have to be done are funded. And once again, it is a matter of choices and priorities, and we hope we have chosen the right priorities. But you will note that there is about \$1 billion to respond to the Oceans Policy Report.

Senator MIKULSKI. No, there is \$40 million less in research.

Secretary GUTIERREZ. Yes.

Senator MIKULSKI. In addition to the broad ocean policy for NOAA and research you know, again, there is often the specific research. So we are concerned again. I do not know if there is a strategic plan for the implementation of the ocean report? What, then, are the strategic priorities? In some ways, the way the National Science Foundation goes about it.

#### PATENT BACKLOGS

But my time, I know other Senators would like to ask questions. Let me go to an important thing with me. That is the patent backlogs. As I understand it, there is a backlog of 500,000 applicants. You and I have talked about intellectual property, and I think we share an interest in it. But you cannot protect intellectual property unless you have patents.

Could you tell us what is the plan to cope with the backlog, and why is the PTO funded through fees paid by inventors? Should we be able to be looking at other revenue streams? Is it the lack of money? Is it the lack of management? Is it the lack of technology at the Patent Office? Because this is probably one of the most important tech transfer agencies. And I will stop there.

But my own State, where biotech is on the rise, my entrepreneurs say we stand in two lines: one to get an FDA approval,

and that is pretty rigorous. Then, we are standing in another line to get our patents, and we feel incredibly disadvantaged. You cannot accelerate a clinical trial. You have to be careful. The patent process is something that we should be able to help them with.

Secretary GUTIERREZ. Senator, I agree with you. I feel very uncomfortable with the lead times. I feel very uncomfortable with 500,000 patents pending in 5 years. The time for pendency is about 18 months. It is my understanding that there are some projects that have been around for even longer than that.

There are two areas in the budget to address that, and we will report back whether it is speeding up and whether it is making progress. One is adding people.

Senator MIKULSKI. Adding people?

Secretary GUTIERREZ. Adding people. There are quite a few new reviewers in the budget who actually review the patents and make sure they get through the system quickly. There are over 600 new positions. I am usually skeptical about just adding people to a problem.

Senator MIKULSKI. Yes.

Secretary GUTIERREZ. But I do think in this case, they do need more people; and then, automating more of what we do at the agency. We can use technology to be more efficient. So those two things have been budgeted. They are in the plan.

In terms of a management challenge, that is probably our biggest one. The part I cannot tell you is how well is the agency managed. Do we have the process? Do we have measurements? Do people know what they are supposed to do? Because I agree, our innovators depend on us to help them get through the system, and I am not sure that we are doing that.

Senator MIKULSKI. Well, this is an area where we will work with you in very intense partnership. I know the chairman of the full committee is here. I am going to hold my questions.

#### ECONOMIC OUTLOOK

Senator SHELBY. Senator Cochran, the Chairman.

Senator COCHRAN. Mr. Chairman, thank you very much.

Mr. Secretary, welcome to the subcommittee. I am very glad to have an opportunity to be here when you present the budget request for your Department to the Appropriations Committee. In addition to gathering information about the health and vitality of the economy, which I mentioned in my opening remarks and congratulated you on the role that you have had in promoting growth in the economy, it is exciting to see the United States growing certainly in comparison with our major trading partners, as you pointed out.

I wonder what your outlook is now, if you can tell us. Do we have the strength, the underlying strength in the economy? Is the structure the right structure to help provide opportunities for businesses in America to continue to prosper and grow in the years ahead? What is your outlook for our potential in the near term?

Secretary GUTIERREZ. I think it is important to recognize that we are at a time today where we have unprecedented prosperity in the country, and it is often hard to conclude that based on how the economy is editorialized.



Our growth was just raised today, the outlook for gross domestic product (GDP) for the first quarter to 3.5 percent. The first number was 3.1 percent. That comes off 4.4 percent last year. Our unemployment is down to 5.2 percent. The President always says we are not satisfied. We are not complacent. 5.2 percent is below the average of the past three decades.

In spite of energy prices, our inflation remains at about 3.1 percent. So that says a lot about the strength of our infrastructure. We have been able to offset that increase in energy prices. And in homeownership, more Americans own a home today than at any point in our history. I think about what is prosperity. People owning their home is a great indicator of prosperity.

Mortgages as a percent of income are actually declining. So people can afford the houses they are buying, which I think is also a great indicator. Now, the challenge is, we have got this prosperity, how do we keep it going?

I believe that we have seen that the President's strategy and his approach to the economy is working. Keep taxes low. We want to make the tax cut permanent. Get unnecessary regulations out of the way. We do not want businesspeople worried about getting sued; we want businesspeople to worry about creating jobs. Tort reform is a major step forward. There is more regulation to address whether it be asbestos, whether it be medical malpractice, but that is part of the agenda. And also a long-term energy plan so we can work strategically on energy long term and not just be reacting to short-term changes in prices.

Health care; and then, very importantly, opening up markets around the world so that we can continue to export market by market. That is one of the reasons why CAFTA is so important. We are paying tariffs going into Central America, while most of their products are not paying tariffs coming into our country. This levels the playing field, and it is good for small manufacturers, for farming, for services. It is just one more example of staying on plan. I think we have to stay on plan. It worries me that we do not recognize sometimes, how good we have it today, how fragile it is and how quickly we can lose it if we do not stay on course.

#### TRADE ASSISTANCE FOR NEW AND SMALL COMPANIES

Senator COCHRAN. One of the services that I am familiar with the Department of Commerce provides to emerging owners of business, those who are trying to learn how to more effectively compete either in exporting goods and services or doing business with the Federal Government as a way to assure success of small and new businesses. In my State, for example, there are a lot of young people, like in any other State, I suppose, but getting started in business for the first time. The Department of Commerce once had a program—I can remember Elliot Richardson coming to Mississippi at my request when I was a Member of the House of Representatives and had a public forum on how to do business with the Federal Government, and it was specifically designed for small business owners, men and women who may not have had the experience that others in business had had and were just getting started.

But the United States is the largest dollar volume purchaser of goods and services in America. So it is a fantastic opportunity if

someone understands how to go about getting started. Is there an office now in the Department of Commerce that has the responsibility of making available information like this in States throughout the country? If there is, do you know whether or not you have enough money in the budget to see that it is sustained and maybe even expanded?

Secretary GUTIERREZ. Yes, sir. We have a minority business development agency in Commerce which works very closely with small business, and then, there is the Small Business Administration, which now works out of the White House. We work very closely together.

And you are right, what drives growth over time is small business. People think it is the big corporations such as IBM and Kellogg, but it is really the small entrepreneur that creates the jobs and comes out with the ideas. Microsoft was a small business 30 years ago.

Your point on the Federal Government being a customer is a great point. If that is how they can get started, our standards are high. If they can meet our standards, most likely, they can go out and sell to consumers as well. So I will take that with me.

Senator COCHRAN. Thank you.

Thank you, Mr. Chairman.

Senator SHELBY. Senator Gregg.

Senator GREGG. Thank you. Thank you, Mr. Chairman.

I know a lot—I apologize for having to leave. The only people who have this number are my children, and when my son calls who is at college, it is a rare event.

#### OCEAN COMMISSION RECOMMENDATION

So I know you addressed the ocean policy issue, and I was interested in your point that you have taken 50 of the items and picked them out and that you put \$32 million, I think, into those items. But the budget proposal, as I read it, basically, \$350 million Congress put in last year was gone, and that was sort of a starting. That was a number to try to build the emphasis. So I guess my question is how does this administration see the Ocean Commission's recommendations? What does it see as the priority, the top priorities of that Commission, and how is it going to promote those items?

Secretary GUTIERREZ. I came in right after the report was issued. I believe it was in December. And I remember going around preparing for my confirmation hearing, and that was a big topic of discussion. We just received this report, which was very important, taken very seriously. There were 200 recommendations, and the challenge was which ones do we start with, and how do we get started?

And my understanding is that 50 were chosen. I think there is very clear alignment between the administration and the report. We want clear skies. We want clear oceans. We want our fisheries to be sound, to be healthy. I do not think that there is a philosophical difference at all. I will give you some examples of the big ticket items that were funded in our budget. There was \$61 million for a sea grant program, which we believe is important, and that allows us to allocate the funds in the areas where we believe they

will make a difference; \$32 million for a fourth fishery survey vessel; \$23 million for ocean exploration.

We have funded additional buoys, and Senator Stevens mentioned that four out of five were not working. I remember that during my last hearing. They are all working today. I checked that before I came here.

We want full tsunami detection capabilities for the Pacific and the Caribbean by 2007, 100 percent. That requires, I believe it is 32 new detection devices. There are big things budgeted; not everything, but again, I think we can make a lot of progress by focusing on some things, getting them done, getting them done right and then moving on to the next listed priority.

Senator GREGG. Well, that is obviously true. We cannot do everything. We could not last year either. But a lot of what you mentioned there is core NOAA activities versus the ocean policy initiative.

Secretary GUTIERREZ. Right.

Senator GREGG. And of course, the budget that came up is significantly below what NOAA was funded at last year by about \$400 million, I think. So even core activities are going to have some pressure on them. But let us take a specific idea. You asked specifics. You maybe are not up to speed on it on the CELP program, which is the coastal estuary protection.

Senator MIKULSKI. What?

Senator GREGG. CELCP. It is called CELCP. It is where you protect coastal estuary marine areas. And there are a lot of them in Maryland.

Senator MIKULSKI. Yes.

Senator GREGG. Are you familiar with that? You can get back to me.

Secretary GUTIERREZ. I would love to get back to you on that.

[The information follows:]

#### COASTAL AND ESTUARINE LAND CONSERVATION PROGRAM

##### *What is the Coastal and Estuarine Land Conservation Program?*

The Coastal and Estuarine Land Conservation Program (CELCP) has been established to help protect estuaries and coastal lands that are important to our nation's environment, economy and communities. The program provides coastal states with funding for projects that ensure conservation of these areas for the benefit of future generations. CELCP was created by the Fiscal Year 2002 Appropriations Act for the Departments of Commerce, Justice and State (Public Law 107-77) and codified at 16 USC 1456d.

##### *Who is eligible for funding through the CELCP?*

Coastal states that have a federally approved Coastal Zone Management Plan or National Estuarine Research Reserve are eligible to participate in the program. A state is eligible to submit projects for competitive funding at the national level once it has developed and received approval of a Coastal and Estuarine Land Conservation Plan. The state must be able to match CELCP funds, 1 to 1, from other funding sources.

##### *What projects will CELCP fund?*

CELCP funds are intended to complement current federal, state and local coastal and estuarine conservation plans. To be considered, the project should address the following:

- Protect important coastal and estuarine areas that have significant conservation, recreation, ecological, historical or aesthetic values, or that are threatened by conversion from their natural or recreational state to other uses;

- Give priority to lands that can be effectively managed and protected and that have significant ecological value;
- Advance the goals, objectives or implementation of federal, regional, state or local coastal management plans.

*What kind of funding is available?*

NOAA has received Congressionally directed funded for this program since fiscal year 2002.

[In thousands of dollars]

	Amount
Fiscal year:	
2002 .....	15,825
2003 .....	37,422
2004 .....	50,558
2005 .....	41,697
2006 Req .....	.....

#### STATUS OF NATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATION COUNCIL AND STRATEGY TARGETING ORGANIZED PI- RACY INITIATIVES

Senator GREGG. Let me say I do support you on your ATP proposal. As chairman of this subcommittee, for years, I was trying to do exactly what you suggested, and I hope the present chairman is more successful than I was. There is another acronym called NIPLECC (National Intellectual Property Law Enforcement Coordination Council), which last year, we stood up with some money, tried to get all of these different groups coordinated on protection of international intellectual property rights, because we found that there were a whole lot of agencies which were supposed to be communicating with each other and using NIPLECC as its coordinating effort but were not.

And the initiatives were falling, you know, the protection of intellectual property is falling through the cracks because so many different people are trying to do it, but nobody is doing it. What sort of coordinating effort is being pursued there, specifically with the initiative that I think we put \$35 million into last year?

Secretary GUTIERREZ. We have NIPLECC in place, and we have just received authorization for an intellectual property coordinator who will oversee the activities of NIPLECC and making sure that those activities are coordinated with other agencies. As you know, NIPLECC could be having some great sessions and discussions, but if they are not coordinated with, say, the Justice Department or the Homeland Security—

Senator GREGG. Well, that is the whole purpose of NIPLECC.

Secretary GUTIERREZ. Right, and that is what this person is going to ensure happens.

We have the Strategy Targeting Organized Piracy (STOP) program, and we are taking that to the next level. STOP has done some great things, making sure that we have a website so people can communicate and a hotline so that people can call in with intellectual property rights violations.

The challenge is then doing something about all of those violations, and that requires, a lot of coordination across the agencies. We are in the process of putting together what that next step is. And we thought about a very simple framework. How do we make

people more aware that we have a problem? And people not just here but consumers.

How do we make sure that our partners have the right laws? How do we make sure that they are enforcing those laws? And then, very importantly, and this goes back to the Patent Office question, is how do we ensure that we are the role models for the rest of the world? Because I think it is important that we can point to our intellectual property standards in the United States and say that is how we do it, and that is how we expect you to do it.

I would love to come back and present to this subcommittee what it is we plan to do in those four areas. To answer your question more specifically, as opposed to just telling you this is an important priority for me. We are going to make sure that NIPLECC works and that it does what it is intended to do and that this coordinator does a great job. I would love to share with you the plan and get your input as to what else we should be doing. I can assure you this is a top priority.

Senator GREGG. That is good news. I would be glad to help in any way that I can.

Secretary GUTIERREZ. Thank you.

#### STANDARDS AND INTERNATIONAL TRADE

Senator SHELBY. Mr. Secretary, I guess along those lines, standards and international trade: the U.S. manufacturers, suppliers, and testing labs are concerned about the new requirements of the European Union directive on the restriction use of certain hazardous substances with electrical and electronic equipment.

This directive would restrict the amount of certain hazardous substances used in electrical and electronic equipment such as household appliances, telecommunications equipment, lighting, electrical tools, toys, and sports equipment. A product must meet these restrictions in order to be sold in the European Union.

The problem is that the directive is vague, and no standard has been agreed upon to determine the amount of hazardous substance, if any, is in these products. Enforcement, I think, is supposed to begin July 1, 2006, a little over 1 year from now. Where are you on this? What steps is the Department of Commerce taking to assist our manufacturers and suppliers in complying with this European Union directive? Where are we going? Will that result in a barrier to trade? We have to watch what people do.

Secretary GUTIERREZ. Yes; that is a great point, and this is actually quite recent.

Senator SHELBY. It is important, is it not?

Secretary GUTIERREZ. It is very important. And this comes on top of another program, which is registration of every single chemical used in every single product. It is more regulation in an area where we had heard they want to reduce regulation. The first step is to meet with our European trading partners and our people and ensure that we understand what it is they are trying to get at.

But this worries us, because this is just one more example of more and more regulation that impedes trade, that has unnecessary steps for businesses, that is not clear, and that can become a trade barrier.

Senator SHELBY. It could be a huge trade barrier.

Secretary GUTIERREZ. Absolutely.

Senator SHELBY. We are going to be on top of that.

Secretary GUTIERREZ. We are very worried, and we will report back.

Senator SHELBY. Interoperability, you know, it is all part of the—some manufacturers say their radios meet the public safety standards for interoperability, but they do not. There is no procedure to verify that this standard is being met is my understanding. We are aware that NIST has conducted some testing on these radios, and not one of the radios tested met the standard. It is alarming. It is widely known that one of the fatal flaws in our response to the 9/11 attacks was our inability to communicate across different radio systems.

Now, we are spending a lot of money to outfit first responders with supposedly interoperable radios; yet, these radios fail to meet the interoperability standards. In the 2005 appropriation, the subcommittee directed NIST's Office of Law Enforcement Standards working with the National Institute of Justice Communication Tech Program and the Department of Homeland Security Safecom program to issue interim standards that can be used to specify the required functionality and testing validation for emergency radio systems.

Where does the process stand at the Department of Commerce, and what are the expected time lines and milestones for the issuance of intercommunications standards? This is a big deal.

Senator MIKULSKI. A very big deal.

Secretary GUTIERREZ. Yes, I agree with that. This falls under the National Telecommunications and Information Administration, and the balance here, is to have interoperability without overregulating. I would love to get back to you on that.

[The information follows:]

#### INTEROPERABLE COMMUNICATIONS

The Department of Commerce, through the National Institute of Standards and Technology (NIST) and the National Telecommunications and Information Administration (NTIA), supports Project 25 (P25), which is a set of standards for interoperable communications equipment used by first responders. The steering committee for P25 is governed by the Telecommunications Industry Association (TIA), which comprises 1,000 member companies.

The following table gives the status of the four P25 interface standards that are key for interoperable communications.

Standard	Status
Common Area Interface .....	Complete.
Inter-RF-Sub-System Interface .....	Completion expected first quarter 2006.
Console Interface .....	Completion expected first quarter 2006.
Fixed Station Interface .....	Completion expected first quarter 2006 (interim form).

To accelerate the completion of the standards, NIST and its federal sponsors at DHS and DOJ are providing additional engineering support to the corresponding technical committees. The second and third standards will be completed on the following timeline, pending approval by the steering committee and the absence of major technical issues.

October 2005—Vote by P25 steering committee.

December 2005—Testing and validation of the standard completed.

December 2006—First products based on the new standard on the market.

The Fixed Station Interface standard will follow the same timeline, but as an interim standard for federal grants and procurement contracts until a final standard is published.

As noted by the Appropriations Committee, there is no formal process for ensuring that products sold as P25 compliant indeed meet the P25 standards. Recent testing by NTIA showed that none of the P25 subscriber units (walkie-talkies) met all of the requirements of the Common Air Interface standard.

Therefore, NIST and NTIA are developing a third-party conformity assessment program that will allow accredited private laboratories to test equipment for P25 compliance. It is expected that DHS will require the use of this program when dispersing federal grants to local and state public safety agencies. In addition, the program can be used by Federal agencies when procuring land mobile equipment for their own use. By January 2006, NIST expects to have all documentation to begin the laboratory accreditation process for the P25 Common Air Interface, and hopes to have products tested in accredited labs by the summer of 2006.

Senator SHELBY. Okay; you can get back to us on that. We have several entities under our subcommittee that are focused on this problem. We have the Bureau. Senator Mikulski is on the Intel Committee, dealing with all of the intelligence agencies. I spent 8 years on this issue. But you are going to be on top of that.

Secretary GUTIERREZ. Yes, sir.

#### U.S. TRADE

Senator SHELBY. You know the WTO Doha Round talks are accelerating. They are moving along. But I have been told that virtually all of the proposals that have been made to date would weaken U.S. trade laws with regard to trade law remedies, in other words, where we have remedies, and the United States has only made several small proposals.

Some of us are concerned that the United States does not have aggressive proposals on the table in these negotiations to strengthen trade law rules. Will you initiate and would you support an aggressive agenda for developing trade law strengthening measures in an interagency process that can be offered in the negotiations? And if so, will you let us know what we are doing? Both of us have a lot of manufacturing in our States, and this trade is important.

Secretary GUTIERREZ. I appreciate that, Mr. Chairman. If I could just say, there was a ministerial meeting in December, and of course, the Doha Round. One of the reasons why I think CAFTA is so important is that we want a strong position at the table. We have to make sure we hold our own, and I am concerned that if we cannot pass CAFTA that we will not be as strong as we need to be. There will be a sense that the United States is losing its edge. We could not get Central America, so that gives other negotiators a sense of strength at the table. I agree we cannot weaken our position at the WTO.

Senator SHELBY. Sure. But trade has got to go on. We have got to be on top of it. And a lot of that comes under your jurisdiction.

Secretary GUTIERREZ. Absolutely.

#### SPECTRUM MANAGEMENT

Senator SHELBY. Mr. Secretary, given the Department's critical role, the Commerce Department, in implementing the President's Spectrum Policy for the 21st Century, what are the long-term plans for spectrum management, and how will you work with the Federal Communications Commission and other relevant agencies in this

endeavor? In other words, what are your priorities with spectrum management, and what do you see as the most significant impact it will have on the commercial industry? Because it certainly will have some.

Secretary GUTIERREZ. Spectrum, as you know, is incredibly valuable. The President has said we want to give every citizen digital access. We do not want to take away access to digital. That is going to take some time, but by 2007, we want all homes in the country to have access to digital.

Senator SHELBY. How are you going to get there?

Secretary GUTIERREZ. A lot of these come down to local communities and how we ensure that we do not just take away service from people who rely on analog television and analog services. But once that is done, and that is in the planning now, that spectrum can be allocated to businesses. We are also getting spectrum from the Defense Department.

Senator SHELBY. It will have a tremendous value, will it not?

Secretary GUTIERREZ. It is one of the most valuable allocations that we will do over the next couple of years. It is the most valuable real estate we have. So I agree, and I would like to report back on how that is shaping up.

[The information follows:]

#### SPECTRUM MANAGEMENT

President Bush recognized that ensuring needed access to the spectrum resource is a critical element in satisfying diverse U.S. interests, such as national defense, public safety, transportation infrastructure, scientific research, and consumer services. The goals of the President's Spectrum Policy are to: foster economic growth; ensure our national and homeland security; maintain U.S. global leadership in communications technology development and services; and satisfy other vital U.S. needs in areas, such as public safety, scientific research, federal transportation infrastructure, and law enforcement.

The Department's long-term plans for spectrum management are to carry out President Bush's direction and implement the recommendations which we have provided the President, to carry out his Spectrum Policy for the 21st Century that will significantly improve the spectrum management system.

The recently enacted Commercial Spectrum Enhancement Act creates a spectrum relocation fund, an important mechanism to facilitate the reallocation of spectrum from governmental to commercial uses. The Department, through the National Telecommunications and Information Administration (NTIA), will carry out the provisions in the Act associated with federal government spectrum management. In June 2006, the FCC plans to auction 90 MHz of spectrum for advanced wireless services, half of which is spectrum that will be transferred from Federal government to commercial use under the provisions of the Commercial Spectrum Enhancement Act.

Senator SHELBY. Mr. Secretary, does CPB, the Corporation for Public Broadcasting, provide more limited assistance to public broadcasting stations than PTFP? Do you know? Will CPB be able to provide grants previously provided by PTFP, that is the Public Telecommunications Facilities Planning and Construction Program grants?

Secretary GUTIERREZ. My understanding, Mr. Chairman, is that they will.

Senator SHELBY. That gets into digital conversion.

Secretary GUTIERREZ. Yes, and we have reduced our involvement. I think we have money in the budget for phasing out that program. The Public Broadcasting System continues, and I believe that the money allocated in the budget is sufficient, and that they will be able to operate. Does that answer your question?



Senator SHELBY. Senator Mikulski.  
 Senator MIKULSKI. Thank you, Mr. Chairman.

#### INTELLECTUAL PROPERTY AND INTERNATIONAL TRADE

Mr. Secretary, the questions offered by the chairman very much parallel my own. We have worked together since we were in the House of Representatives, as I said. A lot of what we are talking about here can definitely be done on a bipartisan basis.

I would like to pick up once again on the international trade issue. Your comment that you just got an intellectual property coordinator was fascinating, because this is a new—this is the first time I have heard this. Could you share with us what that intellectual property coordinator will do and how that person will work with the international trade rep? Is this one person? Is this one person with 100 people? What is the—

Secretary GUTIERREZ. Yes; one person with 100 percent of his or her time on intellectual property only. That is all they will do. They will report to me. They will work with NIPLECC very closely and they will be the conduit to all of the other agencies. There is a lot of work that we can be doing with USTR, but there is also work we can be coordinating with the Justice Department, because a lot of this is enforcement. A lot of this is frankly just tearing down some networks of intellectual property violations and making sure that people are punished.

A lot of it is just straightforward implementation. This person will ensure that we have got priorities, that we are coordinating it, that we know what we are trying to do, that we are measuring progress, because today, it is just very general.

Senator MIKULSKI. It is very general.

Secretary GUTIERREZ. It is very general because it is such a complex area, and we know it is a problem, but we are not sure if we are making progress or not. Hopefully, we will be able to report to you with specific measures as to how much progress we are making such as how many networks have we prosecuted, how many countries have put laws in place, and how many companies have been shut down in foreign countries. I look forward to doing that.

[The information follows:]

#### INTERNATIONAL PIRACY

The U.S. Department of Commerce is working at making combating international piracy and counterfeiting a priority. For example, it is working on the Strategy Targeting Organized Piracy (STOP) Initiative, which has been developed over the last year. STOP is the most comprehensive U.S. government-wide initiative ever advanced to demolish the criminal networks that traffic in fakes, stop trade in pirated and counterfeit goods at America's borders, block bogus goods around the world, and help small businesses secure and enforce their rights in overseas markets. While STOP is a multi-agency effort (e.g., the Department of Justice focusing on the criminal prosecution of criminal networks), Commerce is involved in many facets of this initiative.

#### *Building Coalitions*

The ultimate success of the STOP Initiative involves building coalitions with many of our like-minded trading partners, such as Japan, the United Kingdom, and France, who have all recently launched similar initiatives. We are seeking to continue working with our partners in the G-8, Organization for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) forum. Cooperation on new initiatives to improve the global intellectual property environment is essential to disrupting the operations of pirates and counterfeiters.

*Criminal Prosecution*

Earlier this year, the U.S. Department of Justice announced the successful prosecution of an international piracy enterprise. "Operation Higher Education" focused on the highest levels of these so-called "release groups." The top release groups, also frequently referred to as "warez groups," are the first-providers—the original source for the illegal trading and online distribution of pirated works. Once a release group prepares a stolen work for distribution, the material is distributed in minutes to secure, top-level servers and made available to a select clientele. From there, within a matter of hours, the pirated works are illegally distributed throughout the world, ending up on public channels on IRC and peer-to-peer file sharing networks accessible to anyone with Internet access.

The three convictions, while the first U.S. convictions for Operation Higher Education, bring the total number of domestic convictions for Operation Fastlink to six thus far.

*International Outreach*

A delegation of U.S. officials from seven federal agencies, including Commerce, recently kicked-off our international outreach effort to promote STOP internationally. Earlier this year, we visited various capitals in Asia generating much interest and fruitful discussions. On each leg of the trip, U.S. officials shared information on our efforts to combat the theft of inventions, brands and ideas. This first leg abroad is advancing our commitment by enlisting our trading partners in an aggressive, unified fight against intellectual property theft. Outreach to Asia was followed by visits to other capitals, for example, sending a delegation to Europe. We have tentatively planned that countries receptive to cooperation on STOP will be invited to attend a meeting in Washington, D.C. (likely in the fall of 2005) designed to formalize their participation and finalize a work plan.

As we look to the future, however, let me state a positive note. Although by all accounts counterfeiting and piracy appear to be growth "industries," there have been some recent successes in attacking the problem. Between 2001 and 2002, the software industry estimates that software piracy in Indonesia decreased from 89 percent to 68 percent. In South Africa, it fell from 63 percent to 36 percent. The motion picture industry has reported a decrease in piracy levels in Qatar from 30 percent in 2001 to 15 percent in 2002. In Bahrain, there have been dramatic and systemic improvements in IP protection and enforcement over the past few years. These include the signing of numerous international IP conventions and the virtual elimination of copyright piracy and counterfeiting in retail establishments.

There is some reason for optimism. I remain hopeful that with the continued support and partnership of the Subcommittee, we will be able to do even more to provide American businesses and entrepreneurs with the IP knowledge and protection they need. As we proceed with this and other IP initiatives, we will be pleased to describe our specific progress.

## OFFICE OF CHINA COMPLIANCE

Senator MIKULSKI. Well, we look forward to hearing about it too, because this is essentially a form of, you know, unarmed robbery in some ways. Now, we also note that we in the Congress supported an Office of China Compliance to focus particularly on China issues in the area of international trade that would affect small and medium-sized business. Can you tell us, then, what does the Office of China Compliance as you see it do, and do you see them as promoting us to sell products there or also to one of these areas where we would be again protecting our intellectual property?

Secretary GUTIERREZ. It is a combination of assuring that our partners in China are abiding by our agreements and that we have access to their market. It includes intellectual property rights violations. It is a very broad agenda, and that is one of the reasons why it is good to have a coordinator. It also includes enforcement of antidumping provisions.

Senator MIKULSKI. That is a big job, this Office of Compliance. Secretary GUTIERREZ. I brought some facts.

Senator MIKULSKI. Do you have enough resources for this office? Because I think this and India are—there will be other countries, but these will be our two big—

Secretary GUTIERREZ. We have had more antidumping cases in the last 2 or 3 years than we have in the past 10. We have increased the activity substantially and we believe we can be even more effective.

Senator MIKULSKI. What areas of antidumping? You know, we were brought to our knees in steel.

Secretary GUTIERREZ. Let me give you some examples of cases: folding gift boxes, glass windshields, tables and folding metal chairs. These are all antidumping cases against China. And by the way, it is 28 against China. In the last 8 years, we had 25. So you already had more than what was done in the past 8 years: structural steel beams, welded carbon quality steel pipes, furnace coke products, saccharin.

Senator MIKULSKI. Saccharin?

Secretary GUTIERREZ. You name it: ball bearings, tubular goods, fence posts.

Senator SHELBY. Machine tools.

Secretary GUTIERREZ. We have some machine tools. We have iron pipe fittings, television receivers. I would love to share this with you.

Senator MIKULSKI. I would like to see.

There are many issues in this area, and I just want to share two yellow flashing lights, and then, I want to just go to an NIST issue and an EDA issue in the interests of time.

I mean, that can drive you crazy. I mean, it sounds like small folding chairs. But then, the next thing you know, it is dining room sets, and then, it is this, and then, it is that. And then, all of a sudden, whole towns in North Carolina or Alabama or Maryland are just switched in and out. So it is one thing to compete, but it is another to deal with this. So that is one issue.

#### INTELLECTUAL PROPERTY VIOLATIONS

The other area where I am worried about violation of intellectual property is where they are sending in essentially knockoffs of pharmaceuticals or over the counter medications and so on. You just mentioned saccharin. Diabetes is a characteristic in our economy. So we use these kinds of products. Just imagine if somebody made something under very paltry circumstances, and if my mother, God rest her soul, thought she was using saccharin, but it really was not saccharin, and all of a sudden, it messes up her with her insulin and everything else.

Then, that's just a small thing. That's an over the counter. It is not small to a diabetic. But then, let us get into someone bringing in phony glucophage or phony abandia or knockoff this or that do not meet the standards. It is one of the things that raises my concern about the inflow of drugs. Is this an area that you are involved with? Is this Justice? Is this another agency? Because this, then, goes to not only our economic security but actually our physical, our very physical safety.

Secretary GUTIERREZ. There is a big component to this, the importation of pharmaceuticals.

Senator MIKULSKI. Oh, no, we know.

Secretary GUTIERREZ. And that is really what is driving it. It is more about getting the safety. If we can get that right, then, we can talk about the commercial part.

Senator MIKULSKI. But that is where you would have to team up with FDA, right?

Secretary GUTIERREZ. Yes. And that is why we absolutely support what FDA is doing. If they are saying the safety is not there, then, there is no commerce.

Senator MIKULSKI. Let us go, though, back to your—you know, Mr. Chairman, I found it interesting as Mr. Gutierrez has shared with us all these rules and chemical ever made and every chemical that might be made, et cetera. Do you see this as a way that they are using it to protect, say, their own societies for safety, or do you see this as inventing bureaucracy as a way to be Fortress Europe, or is that something you would rather comment in more genteel terms?

Secretary GUTIERREZ. It is a great question.

Senator MIKULSKI. You are part of our commercial business diplomatic corps.

Secretary GUTIERREZ. I can comment in my business experience with Europe. I can tell you it is a very difficult place to do business. There are a lot of regulations. There are European regulations, and there are also country regulations, and sometimes, they are not the same. I think there is an element where they believe that they are doing the right thing for their societies by having all of these regulations that they believe will protect.

But what is happening is that they are actually impeding the growth of many of their businesses, because their businesses would rather take their capital elsewhere. That is why we would love to see Europe grow faster than 1.5 or 2 percent. I think it grew 1.7 percent last year. Countries like Germany, where the unemployment is 12 percent, the growth rate is less than 1 percent, and we believe, respectfully, that a lot of this has to do with unnecessary regulation and very aggressive tax policy. Taxes are too high, and they have too many regulations.

Senator MIKULSKI. So these are—coming back to my desire for an innovation economy and working in partnership, these are lessons learned from us.

Secretary GUTIERREZ. Yes.

Senator MIKULSKI. In other words, let us protect public health, let us protect public safety, but let us not—

Secretary GUTIERREZ. Yes.

Senator MIKULSKI [continuing]. Move in a direction that is so excessive and overexuberant we end up with—you cannot have a safer society unless you have a stronger economy.

Secretary GUTIERREZ. You are absolutely right. That is the key. That is what they have learned from us, that if they can grow, they can do a lot of things for their society. If they cannot grow, they can do a lot of damage.

#### STRENGTHENING AMERICA'S COMMUNITIES INITIATIVE

Senator MIKULSKI. Let me go to the EDA totally shifting gears. We know that you are going to be introducing legislation on

strengthening American communities, but should not pass as we go through the appropriation this year, there is no money for EDA here except to monitor existing grants. Do you have a plan A and plan B, plan A being the President's position, we understand, moving that legislation forward against, I might add, quite a bit of resistance? But should that not be passed by October 1, this now being June 1, what would be your plan B to fund EDA? To keep it at this year's level or—

Secretary GUTIERREZ. We would have to go back and revisit our programs, the programs we are bringing over. Our plan is based on being able to bring over all the programs from five, six different agencies, HUD being one of them. And that is what we are planning for and what we are looking forward to. If that for some reason does not take place, we will have to go back and revisit the whole design.

Senator MIKULSKI. I know the chairman was, you know, representing the majority party, I know. I will tell you: our communities depend on EDA, and while we are working on strengthening America's communities, and that is being more creative and more efficient, the fact is that they are going to want to know what about this year? Will there be an EDA? And, you know, what we will do or the way that we can do that.

#### STANDARDS AND INTEROPERABILITY

The last just comment I want to make about NIST and the fact that we are so concerned about its reduction in funds, pick up on Senator Shelby and homeland security. What we are saying is we spent a lot of money on protecting your nation, and we are now concerned that this could go to boondoggle. And there are a lot of—there is a lot of, quote, gear being sold. Senator Shelby spoke about the interoperability. Crucial. Because remember, we in the Capital region are several Maryland jurisdictions, the District of Columbia as well as Northern Virginia. So this is big stuff.

But then, at the same time, there are now all of these things from digital cameras to a lot that law enforcement and first responders are buying, and what we hear continually from the private sector, whether it is in IT or other types of protective things that they buy that there is a lack of Federal, national standards, that this is not a priority with Homeland Security, and it needs to be a priority.

And we feel that NIST would be one of the places, particularly those things that are used so that when they are buying it, they know whether it will be interoperable, whether there will be certain standards in terms of efficacy, et cetera. Is this an area where you see NIST coordinating with the Secretary of Homeland Security, where we really are getting value for our dollar in terms of those things that they buy really to either protect the first responder or protect the community?

Secretary GUTIERREZ. Absolutely. NIST, as you know, has been working very closely on the World Trade Center.

Senator MIKULSKI. I know. It is fascinating. We enjoy it.

Secretary GUTIERREZ. That leads to standards for the future.

Senator SHELBY. Mr. Secretary, without standards, though, there is no interoperability.

Secretary GUTIERREZ. That is absolutely right.

The other part about standards that we have to tackle, is the international part, because some countries may be using standards as a trading strategy.

Senator SHELBY. Sure.

Secretary GUTIERREZ. So if they can get their standard into China, we are left out, because our standard does not work in China. So it is domestic; it is international; and it is also a very big issue down the road.

Senator SHELBY. Somebody has got that edge.

Senator MIKULSKI. Well, let us look right now, because we may not be able to deal always with some of these issues facing us internationally. But America is committed to protecting its homeland and protecting, whether it is law enforcement or other first responders. We are committed to protecting them as citizens and as taxpayers. So this is why I think they are so keen on the standards issue, particularly in the area of those things that are most frequently bought in the area of homeland security and the need for efficacy, interoperability, things that the chairman has raised and that, you know, I have seen examples of exactly what you said, from the bullet proof vest to the digital camera to some other things.

Secretary GUTIERREZ. I will take that with me. I know it is a big priority for you, and I will be glad to come back and report.

Senator MIKULSKI. I think that is it, Mr. Chairman. There are many things that we could discuss, like the helicopter; saving lives and saving livelihoods.

Senator SHELBY. Let us keep talking, Mr. Secretary, over time. We know our staffs will.

[The information follows:]

#### INTERNATIONAL STANDARDS

The Department of Commerce's National Institute of Standards and Technology (NIST) provides the measurement and standards infrastructure and information needed to support U.S. manufacturing competitiveness in the global marketplace.

Some examples of NIST efforts already underway to ease regulatory barriers to U.S. exporters include working with industrial laboratories to ensure that manufacturers of telecommunications equipment have efficient access to foreign markets. NIST is the U.S. authority empowered under the Asia-Pacific Economic Cooperation (APEC) Telecommunications Equipment Mutual Recognition Arrangement and the U.S.-European Union Mutual Recognition Agreement to designate qualifying U.S. organizations as competent to certify U.S. telecommunications equipment as meeting foreign regulatory requirements and ready for direct export to APEC and European Union countries. As a result of NIST's work, U.S. manufacturers of telecommunications equipment are now able to certify their products in the United States and ship directly to Canada. Two-way trade of telecommunications equipment between the two neighbors totals some \$7 billion annually. U.S. organizations designated by NIST can test products for three other APEC markets—Australia, Chinese-Taipei and Singapore—as well as for the European market.

NIST has led efforts to align United States and international legal metrology standards to ensure acceptance of U.S. instrumentation for scales and meters both domestically and internationally. The development and implementation of the International Organization of Legal Metrology Mutual Acceptance Arrangement will reduce the number of evaluations to which scale and meter manufacturers must be subjected, thereby reducing costs to manufacturers and reducing the time-to-market for new products. The total market for measuring instruments is estimated to be \$5 billion worldwide.

NIST is also supporting U.S. manufacturers of in vitro diagnostic (IVD) medical devices in maintaining access to the \$6 billion a year European market. U.S. manufacturers supply approximately 60 percent of this market. Recently implemented

European regulations codified traceability requirements for control of these devices, requiring reference to “available reference measurement procedures and/or reference materials of higher order.” U.S. IVD manufacturers requested that NIST provide the internationally recognized certified reference materials and reference methods needed to meet this traceability requirement. NIST led the efforts of the Joint Committee on Traceability in Laboratory Medicine to establish a process for identifying and reviewing the reference materials and methods against agreed upon criteria. NIST has published 72 of the approximately 150 Certified Reference Materials and 30 of the approximately 100 Reference Measurement Procedures required for compliance with the European Community directive regarding IVD medical devices.

NIST has identified work needed to ensure that state-of-the-art measurement technologies and standards that are under development in fields such as nanotechnology, biotechnology, and information technology are applied in support of U.S. manufacturing trade and exports. If U.S. businesses are to compete successfully in global markets, they need to design and manufacture products to globally accepted standards and tie their processes and products to international standards of measurement that are provided by NIST. NIST has identified key areas where U.S. standards and calibrations must be aligned with international standards to give U.S. manufacturers seamless access to foreign markets. NIST highlighted the need to monitor the development of foreign and international standards for potential impact on U.S. exports and the importance of making the resulting information easily accessible to U.S. manufacturers. The funding for this effort was requested in the President’s fiscal year 2006 budget request for NIST. NIST’s fiscal year 2006 budget also included funding to expand its current cooperative standards-related information and assistance programs that target emerging markets (such as China, India, South Korea, Brazil, Russia) where standards-related requirements are still being formulated and to accelerate global recognition of measurements performed by U.S. manufacturers.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator SHELBY. We appreciate your appearance here today. We know it is your first appearance, and we appreciate your coming to this small room. It has got its advantages, too. But we will continue to work with you, because you have got some real challenges, and so do we working with you on this budget and programs. We need certainty when we are funding things. You need certainty, too, in carrying them out.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

##### BOULDER FENCE

*Question.* What is the status of the fence surrounding the Boulder facilities? Where do things stand with the city of Boulder? What are the current plans, timelines, and costs estimates? How does the Department intend to pay for the fence’s construction?

*Answer.* The final location of the fence line has been determined and the City Manager was notified on April 13, 2005. Tribal representatives have been notified as well. Design and material selection is continuing and should be at 90 percent completion by September 2005.

DOC has worked in close consultation with the City of Boulder throughout the process to assure compliance with the Memorandum of Agreement (MOA) with the City and Tribes, and we have taken into account the concerns and suggestions from Boulder citizens, as well as from agency staff at the Boulder Laboratories.

A response letter to this official notification was sent to the National Institute of Standards and Technology (NIST) Boulder Director on June 9, 2005, from the City of Boulder, Office of the City Manager. The letter states, “The City is appreciative of the changes that the Department of Commerce has made to the proposed security improvements in response to concerns that the City has expressed about earlier proposals . . . . At this time the City remains unconvinced of the need for a fence. If Commerce chooses to go forward in developing a fence, the City will insist that the terms of the MOA and the easement be abided by should any portion of such

proposed fence trigger these agreements.” The City has requested additional information on the outdoor lighting that will be part of the proposal; the design and material of the proposed fence and its effect on wildlife migration; the location, size and design of the boulders or bollards proposed to be placed on the east side of the NOAA building and where these would be located within the protected area or the City’s right-of-way. The letter further states, “depending on a review of this information, the City may still express concerns or objections to this latest proposal.”

The NIST Boulder Director met again with City staff on June 24, 2005, and is writing a letter that will be delivered to the City in the near future in response to the questions posed in the June 9th letter and during the June 24th meeting. It is expected that the letter will provide assurances on most of the details of compliance with the MOA and with City codes.

Fence design is continuing in more detail now that the fence location is determined, and a 90 percent complete design is expected by September 2005. Costs including fence material, installation, and electronics (cameras) cannot be accurately estimated until the design is final.

Once the design is finalized and cost estimates developed, the Department will work through the President’s Budget process to determine where funding for the effort falls within other Department and Administration priorities.

The President’s fiscal year 2006 budget does not include funding for the fence construction. Additionally, the Senate Appropriations Committee mark on NIST’s fiscal year 2006 Budget Request contains language that requires the Department of Commerce to consult with the committee prior to proceeding with any security enhancements at the Boulder location and prohibits the redirection of funding from other proposed construction projects at Boulder for security improvements.

HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP: “SMALL AND RURAL STATES”  
PILOT PROGRAM

*Question.* Congress required NIST to submit an implementation plan for the “Small and Rural States” pilot program within the Hollings Manufacturing Extension Partnership. This plan was due April 15, 2005. The plan is now a month and a half late. When can the Committee expect to see the plan?

*Answer.* The implementation plan is currently under development and review within the Administration.

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QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

EMERGENCY STEEL LOAN GUARANTEE PROGRAM (ESLGP)

*Question.* Throughout his time in office, President Bush has stated—over and over again—that he is a staunch defender of America’s steel industry. He has told West Virginia steelworkers and other steelworkers across the nation that he will stand by them. Yet his budget for each of the past three years has recommended rescission of all of the available funds in the Emergency Steel Loan Guarantee Program (ESLGP).

I helped establish the ESLGP in 1999 to help American steel companies in distress. The program has been absolutely critical in helping U.S. steel producers obtain necessary financing. It has saved the day for thousands of steelworkers and retirees across the nation—from Hanna Steel Corporation in Tuscaloosa and Fairfield, Alabama, as well as Pekin, Illinois, to Wheeling-Pittsburgh Steel in Wheeling, West Virginia. I understand that even the loan that was awarded to Geneva Steel in Utah, a company that initially was in default, is now being repaid.

So this has been and continues to be a very successful program. It therefore needs to remain available to ensure the future of America’s steel companies, their workers, and thousands of retirees, who are in critical need of health insurance and pension benefits, and may now live on limited incomes.

I would appreciate the Administration’s support in maintaining this important program.

*Answer.* There has been a low level of utilization of the Steel Program since its inception. Only three loan guarantees under the program have been closed and funded. And only two of these are still performing.

The fiscal year 2004 Appropriations Act extended to December 31, 2005, the authority to guarantee new loans under the Emergency Steel Loan Guarantee Program. No applications were received during this extension period so far and no applications are currently pending. The Administration proposes rescinding \$50.2 million of unobligated balances of loan subsidy in 2006.



## WTO NEGOTIATION STRATEGY

*Question.* The Trade Act of 2002 requires significant effort by the Bush Administration to preserve U.S. trade laws in the ongoing WTO Round. During your confirmation, you assured Senator Rockefeller that you would “vigorously defend and enforce our existing trade remedy laws, and implement those laws as intended to stop dumped or subsidized goods from injuring U.S. industries.”

While other countries are making a multitude of proposals to dismantle U.S. trade laws, there appear to be few creative, new proposals being proposed by the U.S. government to preserve and enhance our critical antidumping and countervailing duty laws.

Can you please explain the Bush Administration’s strategy to “vigorously defend and enforce our existing trade remedy laws” in the Doha Round’s trade negotiations?

*Answer.* Our negotiating strategy is quite clear: (1) To maintain the strength and effectiveness of the trade laws; (2) to enhance transparency and due process requirements; (3) to enhance disciplines on trade distorting practices that lead to unfair trade; and (4) to ensure that dispute settlement panels and the Appellate Body do not impose obligations that are not clearly contained in the Agreements.

Furthermore, the specific concerns raised by Congress in the Trade Promotion Authority have been identified and will be addressed as part of the Rules negotiations. The Administration has actively participated in the Rules negotiations thus far, both in terms of pursuing our own objectives and challenging the proposals of others. The Commerce Department is committed to strengthening WTO trade remedy rules and ensuring that they remain effective in addressing the problems of unfair trade.

## CONTINUED DUMPING AND SUBSIDY OFFSET ACT

*Question.* The Administration has recognized that the WTO decision on the Continued Dumping and Subsidy Offset Act of 2000 or “CDSOA,” also known as the Byrd Amendment trade law, incorrectly imposed obligations on the United States by prohibiting the distribution of monies collected as antidumping and countervailing duties on unfairly traded U.S. imports. Congress has repeatedly called for negotiations in the Doha Round to address this issue, not only in many letters sent to the Administration, but also in the fiscal year 2004 and fiscal year 2005 Consolidated Appropriations Acts. Report language accompanying both of those appropriations bills, signed into law, also directed the Administration to report to the Appropriations Committee every 60 days on the status of those negotiations.

I have not been briefed one time on the status of these negotiations. I understand that Commerce Department officials have a very important role in those negotiations, as do USTR negotiators. By law, the Administration has been directed to negotiate a solution to this trade dispute.

In April 2004, the United States did submit a proposal in the Rules negotiations to recognize “the right of Members to distribute monies collected from antidumping and countervailing duties.” During the confirmation process, you explained that the Department of Commerce and the Office of the U.S. Trade Representative were consulting to ensure proper implementation of the requirements of U.S. law regarding negotiations over CDSOA distributions and would complete those consultations as soon as possible. You also agreed to continue to work to advance congressional objectives in the Doha Round negotiations, including reversal of the adverse CDSOA decision.

Since committing to “pursue changes to those Agreements that will reverse specific adverse findings, including those regarding the Continued Dumping and Subsidy Offset Act,” the United States has not submitted any further proposals to recognize the right of Members to distribute monies collected from antidumping and countervailing duties.

On May 23, 2005, U.S. Trade Representative Rob Portman sent me a letter in which he stated that he wants to work closely with me on the Byrd Amendment to determine “the best way to forge the required consensus in the negotiations.”

Can you please explain how the Administration intends to obtain an acceptable and expeditious solution to the CDSOA dispute at the WTO? When will there be a briefing by the Administration on the status of the negotiations concerning this dispute?

*Answer.* The Administration intends to continue to address this issue in the context of the WTO’s ongoing Doha Round of multilateral trade negotiations. While the United States has not proposed any legal text on this issue, in April 2004, the Administration did submit a paper in the WTO Negotiating Group on Rules indicating our intent to negotiate on this matter, as you noted.

The Rules negotiations are entering a critical phase, and the Commerce Department is working earnestly and in concert with the Office of the U.S. Trade Representative (USTR) to satisfy Congressional objectives. The Commerce Department is working with USTR to draft a second-generation proposal on this issue. We are also prepared to assist the USTR with its responsibilities in reporting to Congress on the progress of these negotiations, and specifically on negotiations over the right of Members to distribute antidumping and countervailing duties. We would be pleased to consult with you and your staff on this paper as the drafting process advances.

#### COLLABORATION WITH U.S. TRADE REPRESENTATIVE

*Question.* Over the past two years, the United States has been on the receiving end of more adverse GATT and WTO challenges than any other WTO Member. Roughly half of all WTO decisions have been issued in cases that challenged U.S. measures, and over three-quarters of those decisions addressed the administration of our trade remedy laws. It is clear that the WTO dispute settlement system has been used unfairly to threaten U.S. sovereignty and to erode the effectiveness of our trade remedy laws. Despite this, the United States has only made four publicly available submissions in the dispute settlement negotiations concerning two topics.

How do you intend to collaborate with USTR to redress this imbalance? What is your strategy to rapidly generate textual proposals that can protect and enhance the U.S. trade laws?

*Answer.* I intend to continue working very closely with the Office of the United States Trade Representative to advance the negotiation of changes to the WTO Dispute Settlement Understanding, as well as the Antidumping and Subsidies Agreements, that aim to correct the most egregious WTO decisions and to ensure that, in future disputes, the panels and the Appellate Body will adhere to the appropriate standards of review.

In the dispute settlement negotiations, the United States has already submitted detailed textual proposals that would serve to achieve the first two elements of our strategy: increasing WTO Members' control over the dispute settlement process and increasing the transparency of that process. With respect to the Rules negotiations, the Administration believes that the negotiations should now focus on "clearing the underbrush" so that the way forward to a text-based negotiation sometime after the Hong Kong Ministerial Meeting is clear. At that time, the Administration will be prepared to pursue our Rules-specific dispute settlement concerns with textual proposals.

*Question.* Specifically concerning the issue of the Doha Dispute Settlement negotiations, during your confirmation process, you offered a general strategy of: (1) increasing member nations' control over the dispute settlement process; (2) increasing transparency; (3) pursuing changes to the Rules Agreements to ensure that panels and the Appellate Body adhere to the appropriate standards of review; and (4) pursuing changes to the Rules Agreements that "will reverse specific adverse findings, including those regarding the Continued Dumping and Subsidy Offset Act, 'zeroing,' and injury determinations." The United States has not submitted any recent, concrete proposals addressing any of the items highlighted in your strategy.

Can you please explain how you intend to advance the negotiation of changes to the WTO dispute settlement system or the Rules Agreements to reverse this long line of adverse trade remedy decisions? Can you provide a timeline of when we can expect such proposals to be submitted?

*Answer.* I intend to work very closely with the Office of the United States Trade Representative to advance the negotiation of appropriate changes to the WTO Dispute Settlement Understanding, as well as the Antidumping and Subsidies Agreements.

In the context of the dispute settlement negotiations, the Administration intends to continue pursuing the textual proposals the United States has submitted that would increase WTO Members' control over the dispute settlement process and the transparency of that process.

In the Rules negotiations, the United States has identified as an issue for further negotiation the need to ensure that panels and the Appellate Body adhere to the appropriate standards of review. With respect to zeroing, the United States has already identified the topic as one of our priorities in the Rules negotiations and is taking the necessary steps to address this important issue. The United States tabled a paper that outlines our views on zeroing and will continue to advocate for the continuance of our long-standing practice as the discussions move forward. With respect to injury determinations, the United States tabled a paper in early July addressing

the Appellate Body's adverse findings with respect to this issue. The Administration intends to pursue these proposals vigorously as the negotiations advance.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUE

NOAA PACIFIC REGION CENTER

*Question.* For several years, my office has worked in partnership with the National Oceanic and Atmospheric Administration toward the construction of a consolidated regional facility for the agency in Hawaii. A site—Ford Island in Pearl Harbor—has been selected after an exhaustive search, and the design process and environmental permit process is underway. All told, the Hawaiian Archipelago comprises over 20 percent of the United States' Exclusive Economic Zone. We are in the midst of a designation process that will lead, I believe, to the creation of the world's largest marine sanctuary. Our pelagic fisheries produce the world's best sashimi-grade tuna, and although they are currently healthy, vigilance in management is necessary to ensure that the international fleets follow America's lead in responsible fishing practices. Our National Weather Service region is the largest in the nation, and our climate and weather scientists lead the world in pushing back the frontiers of understanding the Pacific's meteorology. Their excellent work is matched by corresponding initiatives for coastal disaster management from an all-hazards point of view—initiatives that are developed in Hawaii and then used as patterns among other Pacific Islands.

These efforts are currently hosted in a variety of inadequate and scattered spaces throughout the Island of Oahu. Lease costs are high, and in some cases, the physical plants of the buildings are in serious decay. I would appreciate learning your thoughts on the NOAA consolidated facility.

What NOAA programs are currently in Hawaii?

*Answer.* The following NOAA operations are supported on the island of O'ahu, Hawaii:

- NMFS—National Marine Fisheries
  - Pacific Islands Regional Office
  - Pacific Islands Fisheries Science Center and Honolulu Lab
  - Office of Law Enforcement
- NWS—National Weather Service
  - Pacific Region Headquarters
  - International Tsunami Information Center
  - Honolulu Electronics and Technical Support Unit
  - Tsunami Warning Center (this program is not planned for consolidation at the Pacific Region Center, due to operational considerations)
  - Weather Forecast Office
- NOS—National Ocean Service
  - Pacific Regional Office
  - National Marine Sanctuary Program
  - NW HI Coral Reef Ecosystem Reserve
  - HI Humpback Whale National Marine Sanctuary
  - Pacific Services Center
- OMAO—Office of Marine Aviation Operations
  - Marine Operations Center—Pacific
- OAR—Oceanic & Atmospheric Research
  - Climate Monitoring and Diagnostics Laboratory
  - Forecast Systems Laboratory
  - Joint Institute for Marine and Atmospheric Research
  - Office of Global Programs
  - Undersea Research Center
- Office of General Counsel and Office of Public Affairs

*Question.* How many NOAA employees are currently in Hawaii?

*Answer.* There are nearly 400 employees (NOAA, Joint Institute for Marine and Atmospheric Research, contractors, etc.) in Hawaii.

*Question.* What facilities are currently available for these programs and employees?

*Answer.* There are ten different facilities currently used to support these programs and employees:

Occupant	Location
OMAO .....	#1 Sand Island Snug Harbor
NMFS .....	300 Ala Moana Blvd

Occupant	Location
NMFS .....	2570 Dole Street
NMFS .....	Kewalo Basin
NMFS .....	501 Sumner
NMFS .....	1601 Kapiolani
NOS .....	6700 Kalanianoʻe Highway Hawaii Kai Plaza
NWS/NOS .....	737 Bishop St
NWS .....	220 Kalihi St
NMFS .....	9–193 Aiea Heights

*Question.* Describe the status of these facilities. In particular, give reference to the age and physical condition of laboratory facilities, pier space and facilities for NOAA vessels, and the adequacy of space for the number of employees housed at each facility.

*Answer.* The current facilities are overcrowded and inadequate to support current and future NOAA programs in the Pacific Region. Over the next 5–10 years, NOAA expects program growth in Pacific Region programs to increase this employee base by a modest amount.

NOAA's program space requirements can generally be broken down into three types of space/operations: Office/Lab Space; Ship Operations Space; and Sea-Water ("Wet Lab") Lab Space.

*Office/Lab Space.*—The NOAA laboratory located at the University of Hawaii, Manoa Campus (Dole Street Lab) was constructed in 1949 to house 45 employees of the National Marine Fisheries Service. By the mid-1990s, the lab's programs had grown to over 129 staff and the facilities had deteriorated significantly; thus prompting the plan to replace the Dole Street Lab with another lab facility on the same site. In addition to this location, NOAA leases office/lab space for other programs (including National Oceans Service, National Weather Service).

*Ship Operations.*—NOAA's ship operations are supported at the Snug Harbor location. The current location of the ship operations support facility was barely able to adequately support two ships (due to limited pier space and operational facilities) and cannot support the existing three ships (KA'IMIMOANA, OSCAR ELTON SETTE, HI'IALAKAI). NOAA requires a permanent and cost-effective docking and ship operations solution that will accommodate both current and future ship operations requirements, and has been forced on an interim basis to negotiate temporary berthing arrangements with Navy Region Hawaii at the Ford Island site.

*Seawater Lab Space.*—The current seawater (wet lab) facility at Kewalo Basin supports critical fisheries, marine mammal, and sanctuaries programs. This facility is overcrowded, cannot be expanded at its current location, operates on a month-to-month rental basis, and is at risk of being forced out of its current location because of a larger development plan for the area (published plans from the Hawaii Community Development Authority call for a major redevelopment of the Kewalo Basin and surrounding area). Therefore, a more permanent solution to NOAA's seawater laboratory facility needs is required.

*Question.* What financial costs would be necessary to remediate any deficiencies identified in the previous question?

*Answer.* If NOAA were to maintain the separate locations identified above to support NOAA's operations and programs, substantial investments would be required to replace the facilities at Dole Street Lab, and to develop alternative facilities to replace the current Snug Harbor and Kewalo Basin facilities. The existing facilities have either outlived their useful lives (as is the case with Dole Street Lab); will not be available in the future (as is the case of Kewalo Basin); or their capacity cannot support current or future programs and operations (Snug Harbor, et al.). In addition, given the growth projected in NOAA's programs over the next five to ten years, NOAA would also need to lease increasing amounts of office space to support a modest increase in employee population. These investments in both increased leased space and in capital investments that would otherwise be required to support NOAA's current and future mission and operations in the Pacific Region are estimated at more than \$265 million. This is substantially more than preliminary estimates for the projected cost of the Pacific Region Center.

*Question.* What is the projected growth for the agency in Hawaii?

*Answer.* There are nearly 400 employees (NOAA, Joint Institute for Marine and Atmospheric Research, contractors, etc.) in Hawaii. Over the next 5–10 years, NOAA expects a program growth in Pacific Region programs to increase this employee base by a modest amount.

*Question.* What are the projected financial costs of accommodating that growth if each program continues as it does now—pursuing its own facilities needs inde-

pendent of one another, and without any central planning? Compare these costs with those of the consolidated facility.

Answer. The investments in both increased leased space and in capital investments that would otherwise be required to support NOAA's current and future mission and operations in the Pacific Region are estimated at more than \$265 million. This is substantially more than preliminary estimates for the projected cost of the Pacific Region Center.

*Question.* What is the position of the Department of Commerce on the consolidated NOAA facility in Hawaii? Please explain the Department's rationale.

Answer. The Department of Commerce supports the development of a NOAA Pacific Region Center on Ford Island, and appreciates the support the Senator and his staff have provided to NOAA over the past several years in working towards this objective. NOAA's programs in the Pacific Region are diverse and geographically wide-ranging. They affect not just Hawaii, but also the larger Pacific Region. By bringing its programs together into one facility, NOAA expects to realize benefits in improved operations and mission performance, as well as longer-term operational savings, including the following:

- Create greater focus and attention to the vital role that NOAA's programs play in understanding and predicting the Pacific Region's climate;
- Improve the agency's ability to protect the environment and enhance the sustainability of Pacific Basin resources;
- Provide greater synergy and integration across NOAA in delivering its products and services in the Pacific Region;
- Advance its mission and promote community development through its outreach efforts, cooperative relationships with educational institutions, and growth of internship programs;
- Achieve operational efficiencies and control program expenditures by locating NOAA facilities and services in a common location on existing U.S. government property.

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#### QUESTIONS SUBMITTED BY SENATOR TIM JOHNSON

##### BASE REALIGNMENT AND CLOSURE (BRAC)

*Question.* On May 13 of this year, the Department of Defense (DOD) released its recommendations for realignment or closure of U.S. military bases. These recommendations will now be considered by the Base Realignment and Closure (BRAC) Commission. A revised list of recommendations will likely be considered by the President and Congress. Base closures, particularly in rural states like mine, can have devastating effects on local and regional economies. To mitigate these effects, several federal agencies offer grants and technical assistance to communities forced to cope with a base closure. In the four previous BRAC rounds, the Economic Development Administration (EDA) has been one of the largest, if not the single largest, sources of funding for BRAC-affected communities. The Administration's deep proposed cuts to community development programs including EDA would be of great concern to me under any circumstances. These cuts look even more inadvisable this year, however, in light of the fact that the current BRAC round will generate a significant increase in demand for EDA's assistance. Given that other forms of federal assistance have not grown to accommodate this increased demand, would you please indicate whether EDA has established a plan for ensuring that the needs of BRAC affected communities are met? If EDA has established such a plan, please characterize it. If EDA has not established such a plan, please justify the Administration's willingness to provide less assistance for communities affected by its base closure and realignment decisions.

Answer. EDA continues to be an active participant in national Base Realignment and Closure (BRAC) activities, including working with the bureau's federal partners to coordinate assistance to address the forthcoming BRAC recommendations. In fact, pursuant to Executive Order 12788, entitled Defense Economic Adjustment Program, as amended by President George W. Bush on May 12, 2005, the Secretary of Commerce serves as co-vice chair of the President's Economic Adjustment Committee (EAC), the role of which is to coordinate assistance across the federal government in support of forthcoming base closure and realignment decisions.

Furthermore, EDA has an existing Memorandum of Agreement (MOA) with the Department of Defense's Office of Economic Adjustment (OEA) "to facilitate the award and administration of grant and cooperative agreement activities and to promote consultation between the agencies" on base realignment and closure issues. Pursuant to this agreement, OEA transfers funds to EDA to assist with economic

adjustment projects on former military installations including grants for infrastructure improvements to facilitate the reuse of former military bases.

Finally, when the President's Strengthening America's Communities initiative (SACI) is implemented and its administrative structure established, it is anticipated that the Department, under the auspices of a new bureau, will retain its authority and maintain its historic role assisting BRAC-impacted communities under soon-to-be proposed SACI legislation designed to, among other things, respond to economic adjustment problems. Under the anticipated framework for SACI, a base closing might cause a sudden and severe economic event that could trigger eligibility as a result of the economic dislocation caused by the closure.

#### STRENGTHENING AMERICA'S COMMUNITIES INITIATIVE

*Question.* Part of the Administration's justification for reorganizing community development grant programs as part of the Strengthening America's Communities (SAC) initiative is its assertion that federal funds are not always directed to the neediest communities. Yet the Administration also touts the merits of the block grant method of distributing federal funds, whereby state and local officials decide how such funds should be allocated. They are presumed to understand local needs and priorities more comprehensively than federal officials. These two positions appear to be incompatible—the Administration's critique of how community development funds have been distributed seems to contradict its belief in the wisdom of local officials. Could you please explain this apparent contradiction?

*Answer.* The Administration strongly supports the block grant method of distributing federal funds as an effective mechanism to target taxpayer dollars to address locally established needs and priorities. The Administration notes, however, that existing federal block grant programs, such as the Community Development Block Grant (CDBG) and Community Services Block Grant (CSBG) programs, were developed to address the community and economic development challenges of another era and are no longer achieving their intended purpose of aiding the nation's neediest communities.

The Administration strongly believes that funding should be targeted to those communities most in need. For example, the CDBG program was created to serve distressed communities, but currently allocates 38 percent of its funds to communities (including both entitlement communities and the State portion) with below average poverty rates. The President's Strengthening America's Communities initiative (SACI) will address this deficiency by designing a new program targeted exclusively to the nation's most economically distressed communities.

The SACI represents a shift in federal community and economic development policy. The President and his Administration believe first and foremost that direct federal grants in local development efforts should be easy to access, flexible to use, and targeted directly to the most-distressed communities with an expectation of achieving results.

In focusing on results, accountability for the use of taxpayer dollars will be a critical component of SACI. In exchange for the flexible use of funds at the local level, recipients will be expected to achieve, and be held accountable for results. This initiative represents a new approach to economic and community development assistance by placing the focus on long-term outcomes that demonstrate improvement toward community self-sufficiency. Communities will be required to show that they have made progress toward locally selected goals for development (such as job creation, homeownership, and commercial development) in return for being able to determine how best to spend federal dollars to meet those outcomes.

*Question.* A February 2005 overview booklet about the SAC initiative contains a Frequently Asked Questions (FAQ) section which includes the following question. "Isn't [the SAC initiative] really just a disguise for cutting funding?" The pamphlet goes on to explain that despite the initiative's proposed cuts, community development efforts would be improved by the initiative's reforms. To my knowledge, though, the Administration has not released any analysis to indicate the harm of reducing community development funding will be more than offset by gains from reorganizing the programs. Has the Administration conducted any analysis to indicate whether the SAC initiative is net-beneficial? If so, please share this analysis with me and other members of the Appropriations Committee. In the absence of such analysis, how does the Administration justify its claim that the SAC is something other than "a disguise for cutting funding"?

*Answer.* When the Strengthening America's Communities initiative (SACI) is implemented, the Administration anticipates that there will be administrative savings from reducing the number of programs that communities must work with from 18 to 1. These savings will occur at the federal, as well as state and local levels where

redundant staffing and administrative structures can be eliminated. To date, the Administration has not conducted an analysis that quantifies the administrative savings at the federal level, and it would be virtually impossible to quantify the enormous benefits that would accrue by eliminating redundancy at the state and local levels.

In addition to the anticipated administrative savings, the goal of the consolidation is to provide a more streamlined delivery system resulting in better service and reduced upfront costs for the communities receiving assistance. An important principle behind the SACI is to avoid the need for communities, especially rural and economically distressed communities with limited resources, to have to expend those valuable resources coordinating a vast array of similar domestic community and economic development programs.

These concerns about the status quo mirror the growing consensus among the nation's leading economists and economic development researchers and practitioners that because of the fragmented, unfocused, and duplicative nature of the programs, there is a need to fundamentally rethink and refocus the federal role in support of state and community efforts to promote economic growth and spur job creation in the 21st century economy. For example, one GAO report noted that the fragmentation and excessive bureaucracy make it difficult for communities to obtain assistance and "limit the development of critical knowledge [and] hinder organizations and partnerships."<sup>1</sup> The Administration's new proposed grant program would significantly improve the coordination of resources at the local level by streamlining federal resources.

The recently issued report of the SACI Secretarial Advisory Committee reinforces these findings. The report's overarching premise is that globalization has fundamentally changed the American economy, and that the economic health of our nation is now dependent upon the competitiveness of its regions. Despite these economic changes, our nation continues with policies, organizational structures, and investment strategies built for a past era. Therefore, it is necessary to build a new system of federal economic and community development that invests in the strengthening of regions and their communities. The report emphasizes the need to better target federal resources to communities and regions of high distress.

On the whole, it is anticipated that SACI's new allocation formula will direct more funds to the neediest places. The President's initiative will focus resources on the nation's most economically distressed communities. By focusing on communities most in need, fewer communities may be funded, but they will be funded under an allocation methodology that allows them to receive increased funding along with more flexibility, more control and more focus on activities that drive their local economy or make their communities more livable.

In addition, the President's proposal is more equitable in that it will streamline access to federal assistance by providing a single access point for all communities. By targeting funds on the basis of need, we can direct funding to the communities that are most deserving regardless of whether they are urban, exurban, suburban, or rural.

#### SUBCOMMITTEE RECESS

Senator SHELBY. Thank you very much. The subcommittee is recessed.

[Whereupon, at 3:20 p.m., Thursday, May 26, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

<sup>1</sup> U.S. General Accounting Office, "Community Development: Challenges Face Comprehensive Approaches to Address Needs of Distressed Neighborhoods," GAO/T-RECD-95-160BR, April 13, 1995.